

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

STATE OF MINNESOTA

DEPARTMENT: ATTORNEY GENERAL

Office Memorandum

TO: ARTHUR E. NOOT
Commissioner of Public Welfare

DATE: 1/12/81

Attn: ELLEN DUBUQUE
Special Assistant
Attorney General

FROM: H. THEODORE GRINDAL HTG
Special Assistant
Attorney General

PHONE: 297-3471

SUBJECT: Rules as Approved In the Matter of the Proposed Adoption of Amendments to Rule 185 of the Department of Public Welfare Governing the Planning and Provision of Services to Mentally Retarded Persons (12 MCAR § 2.185)

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

HTG/bw
Encl.
cc: Duane Harves
Susan Robertson

STATE OF MINNESOTA

COUNTY OF RAMSEY

ARTHUR E. NOOT, COMMISSIONER

DEPARTMENT OF PUBLIC WELFARE

In the matter of the Proposed Adoption of Amendments to Rule 185 of the Department of Public Welfare governing the planning and provision of services to mentally retarded persons (12 MCAR 2.185)

FINDINGS OF FACT CONCLUSIONS AND ORDER ADOPTING RULE 185

The above-entitled matter was heard before Richard C. Luis, Hearing Examiner, on the 28th day of July, 1980, at 9:00 a.m. in the Veterans Service Building, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota. The Department of Public Welfare served proper notice as required by Minn. Stat. § 15.0412, subd. 4, as amended Minn. Laws 1980, ch. 615, § 6, upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

At said hearing, the proposed amendments as published at 4 State Register 1973-1981 on June 23, 1980, were considered. Ellen C. Dubuque, Special Assistant Attorney General, appeared as counsel for DPW, and the following persons appeared to testify on behalf of DPW:Ardo Wrobel, Director of Mental Retardation Program Division; Warren Bock, Deputy Director, Mental Retardation Program Division; Shirley Bengtson, Assistant Director, Family and Guardianship Section, Mental Retardation Program Division; and Robert F. Meyer, Program Specialist, Mental Retardation Program Division. The hearing continued until all interested groups and persons had an opportunity to be heard. Pursuant to order of the Hearing Examiner, the record was held open for twenty (20) days for the submission of written comments and statements.

Based upon all the records and proceedings, the Hearing Examiner made Findings of Fact and a Recommendation which are contained in the Report of the Hearing Examiner dated September 15, 1980. This Report is attached hereto as Exhibit A.

Pursuant to the requirements of Minn. Stat. § 15.0412, subd. 4d, (Minn. Laws 1980, ch. 615, § 6), this Report was available to all affected persons for at least five (5) days.

Having considered all of the evidence adduced and upon the records, files and proceedings herein, the applicable statutory standards and criteria, and having confirmed the need for the adoption of amendments to the above-captioned rule and the reasonablemess thereof,

NOW THEREFORE, IT IS ORDERED that the Findings, Conclusions of the Hearing Examiner, as contained in the Report of the Hearing Examiner, are hereby adopted and incorporated herein.

IT IS FURTHER ORDERED that in accordance with the recommendations contained in the Report of the Hearing Examiner, the following additional changes are made to the rules:

1. Section A.4.m.(2): The term "senile elderly" is to be deleted and the term "senility" is substituted.

2. Section A.4: The definitions are to be re-arranged in alphabetical order.

3. Section D.2: The word "individuals" is to be inserted after the term "mentally retarded" in final sentence of the paragraph.

4. Section D.4.b.: A comma is to be inserted in the first line after "The county board;" the word "to" is to be inserted between the words "subject" and "license" in the first sentence.

5. Section E. General: This section, as originally proposed, was an addition to the rule and was labeled as Section "E". It is to be designated as Section "F." in the rule as adopted.

6. Section E. Service Catagories: Section E.1 is to include the following at end of the last sentence: "on the basis of individualized program plans."

The Commissioner concurs with the Hearing Examiner that each of these amendments is necessary, that none of them is substantial, and they are so ordered for purposes of clarity and proper grammer.

IT IS FURTHER ORDERED that this Rule identified as 12 M.C.A.R. § 2.185-- County Board or Human Service Board Responsibilities to Individuals Who Are Or May Be Mentally Retarded-- is adopted this 5th day of November, 1980, and after this day, Rule 185 shall read in its entirety as set forth in the attached Exhibit B, pursuant to the authority vested in me, and pursuant to Minn. Stat. Chapters 15, 245 and 252.

DATED: Nov. 5, 1980

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

Arthur E. Noot

ARTHUR E. NOOT
Commissioner

Our File 654

STATE OF MINNESOTA

COUNTY OF RAMSEY

ARTHUR E. NOOT, COMMISSIONER

DEPARTMENT OF PUBLIC WELFARE

In the matter of the Proposed Adoption of Amendments to Rule 185 of the Department of Public Welfare governing the planning and provision of services to mentally retarded persons (12 MCAR 2.185)

AMENDMENT TO ORDER ADOPTING RULE

The Commissioner of Public Welfare hereby amends his Order Adopting Rule 185, dated November 5, 1980. On December 4, 1980, the Attorney General rejected the submission of Amendments to Rule 185 solely because of a number of misspellings and typographical errors not affecting the substance of the rule. This Amendment to the Order adopts changes correcting all typographical errors and misspellings. Rule 185, as amended, is attached as Exhibit 1 to this Amended Order. This Amendment to the Order Adopting Rule 185 is intended to supplement the Order Adopting Rule 185 and no part of that Order is vacated by this amendment.

The following amendments to the rule are hereby made to correct typographical errors and misspelling noted by the Attorney General:

1. In 12 MCAR §2.185 A. 4. f. the cite to Minn. Stat. §375.02 is incorrect. This section was repealed by Minn. Laws 1974, Chapter 240, §2. The correct cite should be Minn. Stat. §375.01-.55.

2. In 12 MCAR §2.185 A. 4. i. a comma should be inserted after the word "needed" in the third line.

3. In 12 MCAR §2.185 A. 4. j. the commas after "or" should be deleted.

4. In 12 MCAR §2.185 A. 4. m. (1) to complete the sentence properly the words "of whom" should be inserted between the words "diagnosis" and "cannot".

5. In 12 MCAR §2.185 A. 4. m. (2) to be consistent in gender characterization the word "her" should be inserted after the word "his".

6. In 12 MCAR §2.185 A. 4. o. an apostrophe should be inserted after the word "clients".

7. In 12 MCAR §2.185 C. 2. b. in the last sentence the word "individual" should be spelled "individual".

8. In 12 MCAR §2.185 D. 1. in the first sentence the final "s" of the word "participations" should be deleted and a comma inserted after the same word.

9. In 12 MCAR §2.185 D. 4. c. (1)(c) the word "municipally" should be spelled "municipality".

The following amendments to the rule are hereby made to correct all other typographical errors and misspellings in the rule:

1. In 12 MCAR §2.185 A., #2, third line -
"#" sign changed to "§" before 252A.01 and 252A.21

2. In 12 MCAR §2.185 A., 4., 1. Need determination, third and fourth line - after children and adults, parenthesis removed, comma added and Minn. Stat. added before §252.28

3. In 12 MCAR §2.185 C., 1., d. - first line -
first word "diagnositic" corrected to "diagnostic"

4. In 12 MCAR §2.185 C., 2., b., (6) -
"evluation" corrected to "evaluation"

5. In 12 MCAR 2.185 C., 2., c., (2), third line -
the comma was removed after services

6. In 12 MCAR 2.185 C., 3., f., last line -
"#" sign at beginning of line changed to "§"

7. In 12 MCAR 2.185 D., 2., c., first line -
"idenify" - corrected to "identify" and second line "servcies"
corrected to "services"

8. In 12 MCAR 2.185 E., 1., d., fourth line -
"expecially" corrected to "especially" and add slash after "his/"

9. In 12 MCAR 2.185 E., 1., f., fourth line -
last word "populatuon" corrected to "population"

10. In 12 MCAR 2.185 E., 1., k., fifth line -
"appropritely" corrected to "appropriately "

11. In 12 MCAR 2.185 E., 1., m., second line -
"lsiting" corrected to "listing"

12. In 12 MCAR 2.185 E., 1., n., eighth line -
"whcih" corrected to "which" and in parenthesis "$" corrected to "§"
before 252A.01-21

13. In 12 MCAR 2.185 E., 1., r., fifth line -
"Leater" corrected to "later"

14. In 12 MCAR 2.185 E., 1., t., fourth line -
"comsmetic" corrected to "cosmetic"

15. In 12 MCAR 2.185 E., l., v., first line -

first word "transporation" corrected to "transportation"

16. In 12 MCAR 2.185 E., l., w., fourth line -

"provocational" corrected to "prevocational"

17. In 12 MCAR 2.185 E., l., y., eighth line -

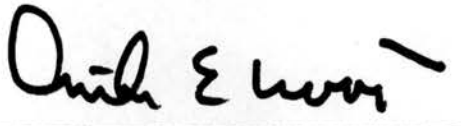
first word "differes" corrected to "differs"

These amendments do not make substantial changes in the rule as originally proposed and clarify the form of the rule.

IT IS THEREFORE ORDERED, that the Rule identified as 12 MCAR §2.185, as adopted on November 5, 1980, is hereby amended as set forth herein.

DATED: December 22 1980

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE



ARTHUR E. NOOT
COMMISSIONER

DM-04

~~DPW-185~~ 12 MCAR 2.185 ~~Community-Mental-Health-Board-and~~ County Board ~~Welfare~~ or Human Service Board Responsibilities to Individuals Who Are or May Be Mentally Retarded.

A. Introduction.

1. This rule is promulgated pursuant to Minn. Stat. §245.61 to .69, 252A.01 to .21, 253A.01 to .21, 256E.01 to .12, 252.28, 393.07, and Minn. Stat. §245.781 to .812.

~~1.~~ 2. This rule governs the planning and provision of services to all individuals who are or may be mentally retarded. In addition, provisions of Minn. Stat. §252A.01 to Minn. Stat. §252A.21, Mental Retardation Protection Act, are applicable to those mentally retarded persons under guardianship or conservatorship of the Commissioner. All financial resources available to agencies affected by this rule for the mentally retarded shall be expended in accordance with this rule. This rule shall not be construed as requiring expenditures of money that is not made available to the county board ~~for~~ from all available resources for mental retardation services.

3. The purpose of this rule is to establish minimum service standards for county boards and human service boards in the provision of case management and the planning, coordination and development of services for all individuals who are or may be mentally retarded.

4. Definitions

a. Case management: The provision of direct services to and with the involvement of the client, which includes diagnosis, assessment of client

needs and development of an individual service plan, implementation of the individual service plan, evaluation and payment for services when the individual, or parent of a child under 18 years of age, is unable or not required to pay. When the client is a ward of the Commissioner, the provisions of Minn. Stat. §252A.01 to .21 are also applicable.

b. Client: A child or adult who is or may be mentally retarded and in need of services as provided in this rule.

c. Commissioner: The Commissioner of Public Welfare and includes any duly authorized representative of the Commissioner.

d. Community mental health board: ~~Local area board or human services board which receives grant in aid from the state agency, to plan for and facilitate programs in mental retardation and assure delivery of services.~~

The local board established under Minn. Stat. §245.66 and authorized by the county board to facilitate and implement mental retardation programs and services. If no such board is established by the county board, then the county board itself shall assume the responsibilities of a community mental health board.

e. Community social services: Those services as authorized under Minn. Stat. §256E.03, Subd. 2.

f. County board: That body of duly elected officials responsible for the governance of its county under the authority of Minn. Stat. §375.01 to .55. Where a human services board has been established under Minn. Stat. §402.02-.10, it shall be considered to be the county board, for purposes of this rule.

~~b.~~ g. Day facility: ~~Placement less than 24 hours per day outside the home which provides~~ Out-of-home setting licensed to provide training in self-care, remedial, developmental, or social skills~~.~~, on a regular basis for periods of less than 24 hours per day.

h. Individual program plan: A detailed plan of the service provider setting forth both short-term and long-term goals with detailed methods for achieving movement toward the individual service plan of the local social service agency. ~~(Rule 34 standards and ICF/MR regulations govern this in specific detail.)~~

~~g.~~ i. Individual service plan: An analysis by the local social service agency~~, for~~ of services needed by the client, including identification of the type of residential placement, if needed, and the general type of program required by the client to meet the assessed needs within a specified period of time.

~~e.~~ j. Local social service agency: A ~~local~~ local agency ~~under the authority of the county welfare board~~ designated and authorized by the County Board or ~~human service board which is~~ the Human Service Board, ~~responsible for social services and income maintenance.~~ to be responsible for providing social services.

~~d.~~ k. Mentally retarded person: A mentally retarded person refers to any person who has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and manifested during the developmental period.

(1) Intellectual functioning shall be assessed by one or more of the professionally recognized standardized tests developed for that purpose:

significantly subaverage refers to performance which is approximately two or more standard deviations from the mean or average of the tests.

(2) Adaptive behavior shall be determined through the use of published scales, or by a combination of pertinent test data, professional observations, and the utilization of all available sources of information regarding the person's behavior which indicates the effectiveness or degree with which the individual meets the standards of personal independence and social responsibilities expected of his/her age and peer cultural group.

1. Need determination: The determination by the Commissioner of need, location and program of public and private residential and day care facilities and services for mentally retarded children and adults, Minn. Stat. §252.28, Subd. 1.

m. Person who may be mentally retarded:

(1) A child under 18 years of age whose behavior demonstrates significant deficits in adaptive behavior concurrently with subaverage intellectual functioning, who is in the process of diagnosis, or for various reasons, a diagnosis of whom cannot be determined or for who a diagnosis may not advisable because of age.

(2) An adult 18 years of age or older who has not been diagnosed as mentally retarded during the developmental period of his/her life, and who, for reasons of accident or physical trauma (excluding such conditions as mental illness, chemical abuse, senility, and debilitating diseases such as muscular dystrophy and multiple sclerosis), has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior such as to require supervision and protection for his welfare.

n. Program: A formal continuum of care that is a culturally relevant and coordinated combination of services, with clear goals and measurable objectives. A program is directed toward meeting the needs of one specified disability group and the individuals within that group, allowing for ready movement of clients among appropriate services.

~~e.~~ o. Residential facility: A setting out ~~Out~~ of ~~family~~ the client's home ~~setting providing~~ licensed to provide care, food, lodging, and provide training in self-care, remedial, developmental or social skills.

(1) Private facility: Profit and nonprofit licensed facilities for mentally retarded clients.

(2) Public facility: Licensed state hospitals (also known as institutions) for mentally retarded clients.

p. Service: A specific, identifiable, goal-related activity designed to carry out a program.

~~f.~~ q. State agency: Minnesota Department of Public Welfare.

B. ~~Standards for~~ The following standards shall be applicable in the planning and provision of services~~:~~ to individuals who are mentally retarded.

~~1. Services to individuals who are mentally retarded shall be based on the following standards:~~

~~a.~~ 1. To provide the ~~person who is mentally retarded~~ client with a normal existence. If this is not possible, to provide the ~~mentally retarded~~ person with

the alternative which is least restrictive. This includes making available to ~~him/her~~ the client patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

~~b.~~ 2. To provide the ~~person who is mentally retarded~~ client with an individual service plan which is designed to acquire new and progressively difficult skills. Such plan must take into consideration the presentation of learning and developmental experience appropriate to ~~his/her~~ client adaptive behavior levels, physical condition and degenerative status.

3. The individual service plan ~~for the mentally retarded person~~ must be based on a comprehensive assessment of needs, and annual evaluations to determine appropriateness and effectiveness of the individual service plan.

~~(1)~~ a. Providing assistance and appropriate support services to enable ~~him/her~~ the client to live in ~~his/her~~ the person's home.

~~(2)~~ b. Providing a community-based private residential facility with appropriate services when the ~~mentally retarded~~ person must leave ~~his/her~~ home for a specified purpose and period of time.

~~(3)~~ c. Providing placement in a ~~state hospital~~ public residential facility when the ~~mentally retarded~~ person cannot be served at home or in the community for a specified purpose and period of time.

d. When placement is made in a public residential facility because a vacancy in a community residential facility does not exist, the county planning body (D.2.) shall be informed of such need.

C. ~~Responsibilities of the local social service agency.~~ Responsibilities of the county board for case management services to mentally retarded individuals. These responsibilities may be delegated to the local social service agency pursuant to Minn. Stat. §256E.08, Subd. 2 and 4. Since it is a universal practice for the county board to delegate these responsibilities to the local social service agency, Section C will refer to "local social service agency" in place of "county board".

1. Diagnosis of mental retardation.

a. The local social service agency has the primary responsibility for insuring prompt diagnosis of mental retardation, utilizing professionally qualified staff, and professional information and assistance from other sources, to secure diagnostic information.

b. The local social service agency shall determine whether the individual is ~~make determination regarding the finding of mental retardation in the individual client or a finding that the person~~ or may be mentally retarded. ~~based upon interdisciplinary procedures identified in other sections of this rule.~~ Such determination may be appealed to the Commissioner ~~of Public Welfare.~~, pursuant to Minn. Stat. §256.045 as a social service appeal.

c. The following ~~information~~ is required for diagnosis of mental retardation:

(1) ~~Diagnosis~~ Determination of intellectual functioning ~~by one~~ through ~~or more of the standardized~~ tests ~~developed for that purpose (and~~ administered by a psychologist who is qualified in the diagnosis and treatment of mental retardation~~)~~. ~~(In parenthesis, from MR Protection Act.)~~

(2) ~~Diagnosis~~ Determination of adaptive behavior on the basis of ~~a combination of pertinent test data which measure aspects of behavior, professional observation, and utilization of all~~ available ~~sources of~~ information regarding the person's everyday behavior.

(3) Medical examination prepared under the direction of a licensed physician~~, and which directs attention to~~ including, but not limited to sight, hearing, seizure problems, ~~etc.~~ and physical disabilities.

(4) Report by a social worker experienced in working with mentally retarded persons on the client's social history and adjustment.

d. Diagnostic review shall be completed ~~made~~ when significant changes in behavior of functional levels occur, and at intervals not exceeding two years' duration. Exception to this requirement ~~can~~ may be made ~~in the case of~~ when adults who have been in a service plan for a period of ten or more years, and the original diagnosis has been twice conformed. In such cases if there has been no signfificant change in behavior or functional level, diagnositic review ~~can~~ shall be ~~accomplished~~ completed at intervals not exceeding four years' duration.

2. Assessment of client needs and development of individual service plan.

a. The local social service agency shall assist any person needing help who is or may be mentally retarded by assessing that person's needs and subsequently planning to meet those needs with the cooperation and involvement of the client, parents, relatives or guardian.

b. The following information, ~~when appropriate,~~ in addition to the ~~diagnosis~~ diagnostic information, ~~is required~~ shall be considered in ~~order to determine~~ determining the individual service plan. If any of this information does not exist, that fact shall be documented in the individual service plan:

(1) Family history.

(2) Medical, prenatal, and birth history.

(3) Early development history.

(4) School reports indicating behavior and functional levels.

(5) Psychiatric evaluation, if indicated by the other reports.

(6) Vocational evaluation reports.

(7) Observations and interviews about family and the environment.

c. The local social service agency shall, in cooperation with the client and parents and/or guardian, develop an individual service plan which shall include:

(1) The Minnesota Developmental Programming System, or other instrument of comparable validity and reliability, shall be used to provide a standardized behavioral assessment prior to development of an individual service plan.

(2) Services to be provided shall be specifically individualized to meet the client's needs. ~~Daytime activity~~ Developmental Achievement Center services shall be provided ~~for preschool children who are mentally retarded or in the process of diagnosis, and adults,~~ when determined appropriate in the individual service plan~~,~~. ~~if such services can be obtained within reasonable travel distance.~~

(3) Provision for implementation of the individual service plan and arrangement for appropriate services.

(4) Provision for ensuring the delivery of service as provided in the individual service plan.

(5) Evaluation, with the assistance of qualified individuals, of the client's progress as described in the client's individual service plan.

(6) Payment for services when the ~~individual,~~ eligible client or parent of a child-client under 18 years of age, is unable or not required to pay.

3. The individual service plan shall be designed to provide services to the client in ~~his/her home~~ the client's home, and to strengthen family relationships, capabilities and responsibilities when placement in a day or residential facility is necessary. Such placement shall be made by the local social service agency in order to carry out the individual service plan.

a. When placement in a day or residential facility is necessary, the local social service agency shall be responsible for planning with the client, ~~his/her~~ the family or representative~~,~~ of the family, the residential or day facility resources, and the public school, if the client is of school age.

~~(1)~~ b. Arrangements for placement in a public or private day or residential facility ~~or state hospital~~ shall be made by the local social service agency. When in the facility, the ~~person~~ client continues to be the client of the local social service agency.

~~(2)~~ c. Acceptance by the public or private facility ~~or state hospital~~ shall be based on the goals and objectives of the individual service plan of the local social service agency, as agreed upon with the client, parent, and/or guardian and as indicated by subsequent assessment and review. Acceptance shall constitute agreement that the public or private facility ~~or state hospital~~ can carry out the goals and objectives of the individual service plan within a specified period of time.

~~(3)~~ d. When a ~~mentally retarded person~~ client is accepted in a day or residential facility, the facility staff shall be responsible, within 30 days of admission, for the development of an individual program plan based on the individual service plan of the local social service agency. The local social service agency shall participate in the development of the facility's individual program plan~~.~~ and take the lead in coordinating such planning when the client is receiving services from more than one provider.

~~(4)~~ e. Out of home placement of ~~mentally retarded persons,~~ clients or persons in the process of diagnosis, is restricted to ~~residential~~ facilities licensed under ~~DPW Rule 34 and other~~ applicable state agency rules or their suc-

cessor. Exception can be made (1) in the case of certification of need for hospitalization or need for a skilled nursing facility for skilled nursing care on a 24-hour per day basis, or (2) when the individual service plan calls for placement in a licensed or certified foster home for four or fewer residents.

~~(5)~~ f. When the local social service agency places a client in a private residential facility located outside of that county, formal arrangements, noted in the individual service plan, must be made with the host county social service agency to carry out certain services. Primary responsibility, however, remains with the agency of ~~legal~~ social service responsibility~~.~~, as specified in Minn. Stat. §256E.08, Subd. 7.

~~(6)~~ g. Counseling shall be provided or arranged by the local social service agency to the individual, his parents or guardian as needed. The local social service agency may request assistance of the community mental health ~~director.~~ board.

~~(7)~~ h. Clients shall be informed that appeal may be made to the Commissioner pursuant to Minn. Stat. §256.045 as a social service appeal. ~~of the state agency.~~

D. Responsibilities of the county board for services to mentally retarded. ~~Community Mental Health Board or Human Service Board.~~ These responsibilities may be delegated to a community mental health board pursuant to Minn. Stat. §256E.08, Subd. 4, and §245.61 to .69, and Chapter 402.

1. The ~~community-mental-health~~ county board ~~or-human-service-board~~ shall ensure opportunity for citizen participation, including representatives of users of services, in accordance with Minn. Stat. §256E.09, Subd. 2, in the planning of service delivery. The county board shall also insure opportunity for the involvement of local social service agencies, local developmental disabilities councils, ~~state-institutions~~ public and private residential and day care facilities and other service providers and advocacy organization in the ~~planning-and~~ coordination of service delivery.

2. The county board shall employ a ~~Qualified-Mental-Retardation Professional-Person~~ professionally qualified person who has at least a bachelor's degree and experience in a field related to the treatment and care of persons who are mentally retarded. This person shall coordinate service delivery to mentally retarded individuals in the ~~area~~ county and develop a service ~~delivery~~ plan. ~~for-the-area-served-on-a-biennial-basis.~~

a. The county board shall take the lead in planning and development of services not available through service providers, public and private agencies, educational and judicial agencies.

b. The county board shall identify the social services ~~categories~~ available in and outside of the ~~geographical-area~~ county for its mental retardation population, including those provided by private individuals or agencies, local public agencies and public facilities ~~state-institutions.~~

c. The county board shall identify in priority of need order the social services that are not available to its mental retardation population.

d. The county board shall provide or arrange for social services ~~categories~~ needed, as specified in the ~~service-delivery-plan~~ County Social Services Plan, within the means available from all sources, as provided ~~provided~~ by the county board.

~~e.--Copies-of-the-plan-shall-be-submitted-to-the-state-agency-in approved-format-on-or-before-July-1-of-the-year-preceding-the-biennial-legislative-session-for-the-purposes-of-budget-planning-and-legislative-proposals. Copies-of-the-plan-shall-be-made-available-to-agencies-involved-in-related planning-activities.~~

3. The county board shall provide psychological and psychiatric diagnostic evaluation, client and parental counseling and assistance in care planning for persons who are or may be mentally retarded as requested by the client or the local social service agencies in the ~~area~~ county served by the board.

~~4.--The-board-shall-submit-a-letter-of-recommendation-to-the-Commissioner concerning-the-need,-location-and-program-for-facilities-and-services-applying for-license-under-Minn.-Stat.-§252.28.~~

4. Need Determination Responsibilities of the County Board.

a. The county board shall obtain need assessment data and other available information concerning needs of the mental retardation population in the county.

(1) The county board shall provide such data and information to parties interested in developing a facility or service for mentally retarded clients.

(2) Applications for need determination for a proposed facility or service to be located in the county shall be prepared by the applicant and reviewed by the county board.

(3) Applications shall include, but are not limited to, the following:

(a) Applicant's name, address, telephone number; proposed location of the facility or service; number, sex and age range of clients to be served; description of proposed facility or service.

(b) Functional level of clients to be served; description of physical, sensory, behavioral conditions.

(c) Program plan; developmental, education, vocational services that will be available outside of the facility (if residential).

(d) Sources of clients; numbers of clients to be served from named facilities such as state hospital, general intermediate care facility, skilled nursing facility, intermediate care facility for mentally retarded, foster home, natural home.

(e) Name(s) of other counties to be served by applicant; if so, the applicant shall submit evidence to the board that those counties will make referrals.

b. The county board, after consideration of the standards for provision of services (part B, this rule), shall submit a letter of recommendation to the Commissioner concerning local need, location and program for proposed facilities and services subject to license under Minn. Stat. 252.28. The letter shall include need data and other information relevant to need for the proposed facility or service, and the applicant's information concerning the proposal.

c. The Commissioner shall make final determination of need, location and program.

(1) After receiving the required information, the Commissioner shall consider the facts, and recommendation of the county board, and other considerations, which shall be:

(a) To protect mentally retarded persons from violations of their human and civil rights.

(b) To assure that such persons receive the full range of needed social, financial, residential and habilitative service to which they are lawfully entitled.

(c) To assure that the location of the facility will not substantially contribute to excessive concentration of community residential facilities within any town, municipality or county of the state.

(d) To assure that clients of public residential facilities who are in need of a small, home-like facility near their family will be admitted to the facility.

(e) To assure that standards for provision of services are carried out, the size of the facility must relate to the needs of the clients for services. The following criteria shall apply:

(1) No facility for more than eight persons shall be approved unless it can be clearly shown that the needs of the residents will be better served in a larger facility and only if the size of the living units (including bedrooms, living rooms, dining room, and kitchen) are for no more than six persons. Meals would not necessarily have to be prepared in each living unit, but kitchen facilities should be available for each living unit.

(2) The ability of the residents to use community medical, psychological, therapeutic and support services.

(3) The number of residents whose physical, sensory or other disability justifies the employment of special staff by the facility.

(f) To assure that the facility and program plan cost projections are within fiscal limitations, and meet standards of effective program management.

(2) Within 30 days of receipt of the applicant information and recommendation of the county board, the applicant and county board shall be notified of the Commissioner's decision. The notice of the Commissioner's decision shall contain notice of the right to appeal that decision, pursuant to section D.4.c.(4) below. If approved the Licensing Division of the state agency shall then act upon a license application, and the applicant may seek certification under Title XIX and other funding resources from the state agency.

(3) If a licensed facility requests an increase or decrease in licensed capacity, or change in program of any facility or service, that may require change in staffing or remodeling, the facility shall apply to the Commissioner directly. No change shall be granted until the county board has an opportunity to comment. The Commissioner shall notify the county board of such a request by sending a copy of the request to the county board. The county shall have 30 days to comment. The Commissioner shall use the same criteria as is specified for original applications.

(4) Determination of need may be appealed in accordance with provisions of Minn. Stat. Chapter 15. Notice of Appeal must be served upon the Commissioner within 30 days of receipt of notification of the Commissioner's decision.

E. Service Categories.

1. The following service categories, in alphabetical order, shall constitute the range of direct and indirect services needed for a service delivery system in an identified geographical area of the State of Minnesota for its mentally retarded population. These service categories shall be identified to assure delivery as needed, on the basis of individualized program plans.

a. Activity program for adults: Activities which emphasize occupational and social goals which assist adults to become as self-dependent as possible and to make constructive use of leisure time. They are comprehensive and coordinated sets of activities providing personal care and other services to adult mentally retarded persons in or out of their own homes during a portion of the 24-hour day. Services may include a variety of creative, social, physical and learning activities based upon an appropriate assessment of need.

b. Assessment services: The systematic determination of pertinent physical, psychological, vocational, educational, cultural, social, economic, legal, environmental and other factors of the mentally retarded person and his/her family; to determine the extent to which the disability limits can be expected to limit the person's daily living and work activity; to determine how and to what extent the disabling conditions may be expected to be minimized by services; to determine the nature and scope of services to be provided; to select service objectives which are commensurate with an individual service plan of action. It is to be followed at whatever intervals are needed by periodic reassessment; services are to be provided whenever necessary in the life of the individual. Assessment services are directed toward the effects of the disability and toward maximizing life functions in the face of remaining conditions.

c. Basic developmental services: Activities emphasizing maturation and supplementing the services provided by parents or parent surrogates.

They are comprehensive and coordinated sets of developmental learning activities conducted in or outside the home during a portion of the day. These services include a variety of creative, social, physical, and learning activities selected in accordance with an appropriate assessment. The focus is upon the developmental schedule itself (individual program plan) and upon the acquisition of skills in self-care. This service should continue on a sustaining basis for these who would otherwise suffer loss of functional level.

d. Case management (service management): An expert person who provides coordination of all the case activities on behalf of the clients of the local social service agency. The case manager is held responsible for mobilizing the resources needed, including especially those not provided directly by his/her own agency. It is a persuasive, rather than an administrative role. Case management is provided by a professionally qualified individual (typically not a volunteer) who has a limited but assigned number of clients.

e. Client information and referral service: Public information about services and procedures in obtaining them. This service may provide referral activity directly or may inform an inquirer. This client information and referral service may be on a face-to-face basis or may be available by telephone.

f. Community services: Mentally retarded people are ordinarily expected to make use of the same community services that are used by people who are not retarded. These services are not detailed because they are not specialized on behalf of the mentally retarded population.

g. Counseling: A face-to-face relationship with the mentally retarded individual and/or parent, siblings or other relatives in order to help the individual understand and accept his/her capabilities and limitations, and to carry through on a program of adjustment and self-improvement. This requires knowledge of human behavior and the use of special interviewing skills to achieve specified goals mutually accepted by counselor and client (or parent/guardian). Counseling is an episodic activity carried out when the need arises. Its focus is upon the solution of specific problems.

h. Diagnostic services: Coordinated services including, but not limited to, psychological services, social services, medical and other services necessary to identify the presence of a disability, its causes and its complications. Diagnosis is a current assessment of the client's condition and shall be a guiding factor in the development of the individual service plan. Diagnostic review is to be made whenever necessary in the life of the mentally retarded person, according to C.1.d. of this rule.

i. Domiciliary (residential) care: Out of home living quarters, supervision and personal care to persons needing such care and services. Domiciliary care services differ from special living arrangements by its higher degree of supervision and the greater amount of personal care needed, as compared to — Special living arrangements.

j. Family support services: Those services which enable the family as a unit to meet the family-related needs of the mentally retarded persons. Family support services may include any of the other defined services. It is distinguished in that it is given to the family in their homes.

k. Follow along: A monitoring relationship by the local social service agency on a life-long basis with retarded persons and their families, if needed. It is to assure that changes in need, progression to new levels of adaptive competence, and the problems arising from crises are recognized and appropriately met.

l. Job placement services: The process of securing employment. Competitive employment is employment offered under ordinary conditions and in competition with ordinary employees. Job placement services needed by mentally retarded persons are generally those of securing and adjusting to a job, with no implication that this is limited to a single time or period in the life of the persons.

m. Professional information and referral service: An up-to-date and complete listing of all appropriate resources which can be made available and accessible to professional persons serving mentally retarded persons and their families so that they can be referred to the most appropriate and readily available resources. This kind of information and referral services is ordinarily not used by the client.

n. Protective services: Social, legal and other appropriate services which assist individuals who are unable to manage their own affairs or to protect themselves from neglect, exploitation or hazardous situations without assistance from others and to help them exercise their rights as citizens. Protective services may be an adjunct to parent responsibility, or they may be exercised in the absence of the responsible parent. Protective services should be selective in scope and should be limited to those aspects of life function in which a need is demonstrated. (See Minn. Stat. §252A.01-.21, MR Protection Act.)

o. Recreation services: Planned and supervised leisure-time activities designed to help meet specific individual needs in self-expression, social interaction, athletic endeavors and entertainment; to develop skills and interests leading to enjoyable and constructive use of leisure time; and to improve his/her well-being. The service may include assistance to the individual in his/her use and access of normal community recreation activities.

p. Service delivery system coordination: Responsibility within a given community for the provision of the full range of services. This is a planning and resource-mobilizing function rather than a direct service to clients. It is concerned with the structure and the availability of services rather than with the solution of personal problems. It must be provided in connection with a multi-service area of authority. Information and referral services shall be provided in conjunction with service coordination, and the two are typically interrelated.

q. Sheltered employment: A structured service providing partial self-support through the employment of the retarded worker under conditions which allow for low production rate, need for special work supervision, inability to handle a full range of job duties, or need for special job en-

gineering and adaptive equipment.

r. Special education: A structured learning experience, based upon appropriate assessment and through the use of a broad curriculum of practical academic subjects primarily designed to develop the ability to learn and to acquire useful knowledge and basic skills in its earliest stages. In its later stages, it grades all the way through the equivalent of a secondary education and appropriately interacts with the occupational service system, such as work adjustment. Special education is legally required of the public school district acting either as direct provider or as purchaser of the service.

s. Special living arrangements: Living arrangements for persons who need some degree of supervision. Special living arrangements should provide at least counseling and leisure-time activities in addition to living arrangements. The service is for disabled persons who can leave their place of residence for work, recreation or other reasons.

t. Treatment services: Interventions which halt, control or reverse those processes which cause, aggravate or complicate disability. Interventions may include treatment, such as surgical procedures, dietary controls, cosmetic therapy, chemotherapy, speech therapy or physical therapy, directed toward basic personal goals, dentistry, and medical treatments as indicated by the needs of the individual being served. Specialized medical and dental care are included.

u. Training services: Planned and systematic sequence of instruction in formal and informal activities based upon appropriate assessment and designed to develop skills in performing activities of daily living, including self-help, motor skills, and communications; to enhance emotional, personal, and social development; to provide experiences conducive to the acquisition of positive self-concepts and desire to learn; and to provide experiences basic for future productive activity. Emphasis is upon those skills needed to function as a member of the community. This service is not restricted to any particular age and can be offered at any appropriate time in the life of the individual who is mentally retarded.

v. Transportation services: Necessary travel and related costs in connection with transporting retarded persons to and from places in which they receive services. Transportation also includes taking services to the homebound, delivery of raw materials, and finished products from homebound industries when needed. The use of public transportation is included.

w. Vocational evaluation: Assessment of worker characteristics, through the use of unreal or simulated work tasks. The purpose is to assess occupational strengths and weaknesses, and potential for vocational development. It also includes prevocational evaluation and work evaluation. This requires the use of a rehabilitation facility or similar controlled experimental setting.

x. Volunteer services: Volunteer activities by individuals, service organizations and advocacy groups, provide a variety of services on a group or one-to-one basis that supplements and augments services provided to mentally retarded persons. This may also include participation in advisory committees, advocacy activities and other forms of personal support to in-

dividuals. Such services are not to supplant staff services, and are ordinarily provided by unpaid persons and groups.

y. Work activity: It is for those whose productivity is such that they cannot meet the demands of sheltered employment. For people who need a work setting as part of their program in order to foster a sense of self-worth through work while earning a below minimum wage, it legally enables a wage to be paid. Work activity, in addiiton, includes a variety of creative, social, physical and learning activities. Work activity may be provided only in facilities having a Federal Wage and Hour certificate for this purpose. It differs from activity programs for adults in that there is a significant productive element: it differs from sheltered employment in that it allows a wage of up to one-fourth the standard minimum.

z. Work adjustment: Learning activities typically involving real or simulated work tasks and situations. It is intended to assist a person to develop basic skills, attitudes, motivation, and work habits of the kind needed in competitive employment, sheltered employment or work activity. It develops social skills needed to function in a work environment. Its focus is upon basic employability rather than upon the skills of a specific occupation.

F. General.

The provisions of this rule shall be severable. If any clause, sentence, or provision is declared illegal or of no effect, the validity of the remainder of this rule and its applicability shall not be affected.

BR/hsa

APPROVED AS TO FORM AND LEGALITY

Jan 12 19 81

WARREN SPANNAUS, ATTORNEY GENERAL

BY W Tilden Thrall

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 12 1981
Joan Anderson Growe
Secretary of State
3:25 PM

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : ARTHUR E. NOOT
Commissioner of Public Welfare

Attn: ELLEN DUBUQUE
Special Assistant
Attorney General

DATE: December 4, 1980

FROM : H. THEODORE GRINDAL HTG
Special Assistant
Attorney General

PHONE: 297-3471

SUBJECT: In the Matter of the Proposed Adoption of Amendments to Rule 185 of the Department of Public Welfare governing the Planning and Provision of Services to Mentally Retarded Persons (12 MCAR § 2.185)

The above-captioned rules have been disapproved for the following reasons:

1. In 12 MCAR § 2.185 A. 4. f. the cite to Minn. Stat. § 375.02 is incorrect. This section was repealed by Minn. Laws 1974, Chapter 240, § 2. The correct cite should be Minn. Stat. § 375.01-.55.

2. In 2 MCAR § 2.185 A. 4. i. a comma should be inserted after the word "needed" in the third line.

3. In 12 MCAR § 2.185 A. 4. j. the commas after "or" should be deleted.

4. In 12 MCAR § 2.185 A. 4. m. (1) to complete the sentence properly the words "of whom" should be inserted between the words "diagnosis" and "cannot."

5. In 12 MCAR § 2.185 A. 4. m. (2) to be consistent in gender characterization the word "her" should be inserted after the word "his."

6. In 12 MCAR § 2.185 A. 4. o. an apostrophe should be inserted after the word "clients."

7. In 12 MCAR § 2.185 C. 2. b. in the last sentence the word "individual" should be spelled "individual."

8. In 12 MCAR § 2.185 D. 1. in the first sentence the final "s" of the word "participations" should be deleted and a comma inserted after the same word.

9. In 12 MCAR § 2.185 D. 4. c. (1)(c) the word "municipally" should be spelled "municipality."

Upon consideration of the issues raised in this memorandum, these rules may be resubmitted to this office. Please be advised that the Chief Hearing Examiner requests that any changes other than those that are merely typographical or those that go only to form that are made subsequent to his review be resubmitted to that office. Because the

above-referenced changes are merely typographical, in my opinion they do not require resubmittal to the Chief Hearing Examiner.

At the time of resubmission to this office, please insure that the original and two copies of the Amended Order Adopting and the Amended Rules as Adopted are submitted as they are necessary for filing with the Secretary of State. This office has retained copies of all other jurisdictional documents. For administrative convenience, please designate the rules as resubmitted rules at the time of resubmission.

If you have any further questions in regard to this memorandum, please contact me.

HTG:mb

Enclosure

cc: Duane Harves
Susan Robertson

#654

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 11/13 (1/2) DUE DATE 12/3 (1/11)

Resubmitted and Received 12/31

a. Returned to Agency w/o Filing w/Secretary of State _____
b. Approved 1/12 Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable N/A
4. Order for Hearing ✓
5. Notice of Hearing ✓ 7.28.80
   Sufficiency ✓
6. Secretary of State's List ✓ (one copy only)
7. Certificate of Acquisition of Secretary of State's List ✓
8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency ✓
9. Affidavit of Mailing ✓ Additional Mailing ✓
   At least 30 days prior to hearing ✓ 6.18.80
10. Publication in State Register ✓
    At least 30 days prior to hearing ✓ 6.23.80
11. Statement of Need and Evidence ✓
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact ✓ combined with #15 - Order Adopting
14. Certificate of Board's Resolution Adopting Rules, where applicable N/A
15. Order Adopting ✓ combined with #13 - F. of F.
16. Report of Chief Hearing Examiner N/A
17. Order Approving Incorporation by Reference, where applicable N/A
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓
20. Petition by Public, where applicable N/A

RECEIVED
NOV 26 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

BARTSH AND MCINTOSH
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
270 GRAIN EXCHANGE BUILDING
MINNEAPOLIS, MINNESOTA 55415

THOMAS C. BARTSH
ANDREW C. McINTOSH
SAMUEL C. TRIPP

AREA CODE 612
338-5636

OF COUNSEL:
PAUL SIMONSON
DAVID GRONBECK

November 26, 1980

Mr. Gerald Anderson
Special Assistant Attorney
General
Attorney General's Office
G-25 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Hand-Delivered

Re: In the Matter of the Proposed Adoption of Amendments to Rule 185 of the Dept. of Public Welfare Governing the Planning and Provision of Services to Mentally Retarded Persons (12 MCAR §2.185)

Dear Mr. Anderson:

Please be advised that this office represents the Association of Residences for the Retarded in Minnesota (ARRM). Please consider the following as comments to Rule 185. It is my understanding from notice received at this office that the amendments are now before the Office of the Attorney General for review as to form and legality.

ARRM objects to the Hearing Examiner's report, both as to form and legality. As to the legality issues, we offer the following comments:

The Hearing Examiner's report cites the addition and/or subtraction of several sections after the rule had already been to public hearing. In all of the subtractions and additions, the Hearing Examiner finds that there is no substantial change and therefore no violation of the APA. Your attention is drawn in particular to finding no. 18, page 8 of the Hearing Examiner's report. In finding no. 18, the Hearing Examiner talks in regard to Section E of 12 MCAR §2.185 ("Service Categories"). The proposed changes had all of that section stricken from the rule. After the close of the hearing, the entire section was put back in. My client would wish to comment on this section if it is to be in the rule. When the proposed amendments were made public, this section was stricken and naturally, my client did not spend a great deal of time addressing a section that was stricken. Now, after the hearings are closed, my client is in a position of having this entire section put back into the rule. Obviously, the client has not had an opportunity to comment on anything in this section.

The Hearing Examiner gets around this problem by stating that this section was in the earlier rule and therefore no substantial change in the rule has occurred. We submit to the Attorney General's Office, however, that the substantial change which we are talking about is a substantial change in the rule as published and proposed and discussed at public hearing.

The definitions contained in Section E affect the entire rule and certainly would have affected comments and changes in the other part of the rule. Since they were stricken, many words take on new meanings when Section E is put back in. Again, I must re-state that my client has had no opportunity to comment on this section, and made all of its comments at the public hearing based on the representation of the Department of Public Welfare that this section would be deleted. After hearings were closed, the Department of Public Welfare once more put the section back again. To state that this is not a substantial change in the proposed rule because it was already there, is denying the obvious fact. Since Section E affects the entire rule, the addition or deletion of that section after the proposed rule amendments were published affects the entire process and is in direct contradiction to the APA.

Several other additions and deletions were made after the matter had gone to public hearing. Amongst the more difficult of these are the changes in subsection D.4.c as described the Hearing Examiner's findings of fact no. 17. Instead of having three criteria as contained in the published proposed amendments, the Department now has gone down to one criteria. Again, no opportunity was given for anybody to voice their concern or agreement with this new single criteria.

There are several other changes of similar nature within the rule. Pointing out these two, however, should give you enough indication that the Hearing Examiner's conclusion no. 5 that the additions to the proposed rule amendments which were proposed after publication of the rules are not substantially different from the rules as published, is incorrect. The proposed rule amendments which were made after the publication have substantially changed the rules as published.

In summary, the Hearing Examiner has used the wrong standard pursuant to Minn. Laws 1980, ch. 615, §6, subd. 4d. The standards which the Hearing Examiner should use is whether or not the proposed amendments after publication substantially changed the rule as proposed, not whether they substantially changed the rule that is in effect. To do anything else, would make a "Catch-22" situation out of the APA. Clearly, this is not the intent of the Legislature.

Mr. Anderson, I have tried to be brief, as I understand you have very little time in which to review the rule. I also thank you for the extension of time that you gave us to comment on these rules due to the fact that I was out of town.

If you have any further questions or wish any further information, please do not hesitate to contact me.

Sincerely,

BARTSH AND MCINTOSH
Professional Association

Thomas C. Bartsh

Thomas C. Bartsh

TCB:pc

cc: Mr. Harold Tapper, Executive Director, ARRM

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910



September 15, 1980

Mr. Arthur E. Noot, Commissioner
Department of Public Welfare
4th Floor, Centennial Office Building
St. Paul, Minnesota - 55155

RE: In the Matter of the Proposed Adoption of Amendments to Rule 185 of the Department of Public Welfare Governing the Planning and Provision of Services to Mentally Retarded Persons (12 MCAR sec. 2.185)
HE Docket No. DPW-80-039-RL

Dear Commissioner Noot:

I enclose herewith and serve upon you by mail the Report of the Hearing Examiner in the above-entitled matter together with the official record, and I am closing our file in this case.

I am also certifying the original of the transcript to your office.

Very truly yours,

RICHARD C. LUIS
Hearing Examiner
(612) 296-8114

RCL/eag
Encs.
CC: Ms. Ellen Dubuque
Special Assistant Attorney General

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Eileen A. Gaiovnik, being first duly sworn, deposes and says that on the 15th day of September, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of the Hearing Examiner, DPW-80-039-RL

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat. § 16.54 (1974), a true and correct copy thereof on all persons at the addresses shown on the attached mailing list.

Eileen A. Gaiovnik

Subscribed and sworn to before me this
15th day of September, 1980.

Susan C. Wojcik

SUSAN C. WOJCIK
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commission Expires April 26, 1986

Arthur E. Noot, Commissioner
Department of Public Welfare
4th Floor, Centennial Office Building
St. Paul, Minnesota - 55155

Ms. Ellen Dubuque
Special Assistant Attorney General
515 Transportation Buildng
St. Paul, Minnesota - 55155

DPW-80-039-RL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF PUBLIC WELFARE
MENTAL RETARDATION PROGRAM DIVISION

In the Matter of the Proposed Adoption of Amendments to Rule 185 of the Department of Public Welfare Governing the Planning and Provision of Services to Mentally Retarded Persons (12 MCAR § 2.185).

REPORT OF THE HEARING EXAMINER

Pursuant to an Order for and Notice of Hearing respectively issued on June 2, and June 3, 1980, by Arthur E. Noot, Commissioner of Public Welfare, the above-entitled matter came on for hearing before Richard C. Luis, duly appointed as Hearing Examiner by the Chief Hearing Examiner, at 9:00 a.m. on Monday, July 28, 1980, in Conference Room D, Veterans Service Building, 20 West 12th Street, St. Paul, Minnesota.

This Report is part of a rule-making process held pursuant to Minn. Stat. ch. 15, to determine whether proposed amendments to rules governing the planning and provision of services to mentally retarded persons should be adopted by the Department of Public Welfare.

Ellen Dubuque, Special Assistant Attorney General, appeared as counsel for the Mental Retardation Program Division, Department of Public Welfare (hereinafter the "Department"). Members of the agency panel included: Ardo Wrobel, Director, Mental Retardation Program Division; Dr. Warren Bock, Deputy Director, Mental Retardation Program Division; Shirley Bengston, Assistant Director, Family and Guardianship Section, Mental Retardation Program Division; and Robert Meyer, Program Specialist, Mental Retardation Program Division.

Twenty-two persons signed the hearing register. Five members of the public spoke at the hearing. The Department submitted 11 exhibits. The public submitted eight exhibits, six of which were submitted prior to the hearing in response to a Notice of Intent to Solicit Outside Opinion concerning the proposed amendments and to the Notice of Hearing. Nineteen written comments were received by the Hearing Examiner from the public subsequent to the hearing and prior to the close of the record, which remained open through August 15, 1980, by order of the Hearing Examiner. The record also includes a final submission from Mr. Wrobel on behalf of the Department, which submission was received on August 15, 1980. The record does not include six written comments which were received by the Hearing Examiner after August 15, 1980, but these comments were forwarded to the Commissioner of Public Welfare for his consideration together with the official record of these proceedings, to be considered by him as comments upon the Hearing Examiner's Report.

Pursuant to Minn. Stat. § 15.0412, subds. 4d and 4e (Minn. Laws 1980, Ch. 615, §§ 6 and 7), this Report shall be available for review to all affected individuals upon request for at least five working days. Thereafter, the Commissioner of Public Welfare shall, if he proposes to adopt the rule as recommended herein, submit the rule, together with the complete hearing record to

the Attorney General and shall be responsible for notifying persons who have indicated that they wish to be notified of such filing. If the Commissioner makes substantial changes in the rule other than those recommended herein, he shall submit the rule with the complete hearing record to the Chief Hearing Examiner for a review of the changes prior to adopting it and submitting it to the Attorney General for review.

Based upon all the records and proceedings herein, the Hearing Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On May 12, 1980, the Department published a Notice of Intent to Solicit Outside Opinion concerning the proposed amendments at 4 State Register 1783, in accordance with Minn. Stat. § 15.0412, subd. 6. This publication yielded one written comment.

2. On June 4, 1980, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed amendments.
(b) The Order for Hearing proposed to be issued.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of time for the Agency's presentation.

3. On June 18 and 20, 1980, respectively, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice, to all Minnesota County Welfare Departments, all Minnesota Human Service Boards, all Minnesota Area Mental Health Boards, all Minnesota State Hospitals, Developmental Achievement Center facilities, and Rule 34 facilities.

4. On June 23, 1980, a Notice of Hearing and a copy of the proposed amendments were published at 4 State Register 1973-1981.

5. On July 1, 1980, , the Department filed the following documents:

(a) The Order for Hearing.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Receipt of the Secretary of State's list.
(d) The Affidavit of Mailing the Notice to all persons on the Secretary of State's list, and an affidavit of additional mailing to all Minnesota County Welfare Departments, all Minnesota Human Service Boards, all Minnesota Area Mental Health Boards, all Minnesota State Hospitals, Developmental Achievement Center facilities, and Rule 34 facilities.
(e) The Statement of Need and Reasonableness.
(f) The names of Department personnel who will represent the Agency at the hearing.

The documents were available for inspection at the Office of Administrative Hearings (Office of Hearing Examiners) from the date of filing to the date of the hearing.

6. The Department failed to file material received following publication of the Notice of Intent to Solicit Outside Opinion until the date of the hearing. This filing was 25 days later than the time required for filing under 9 MCAR § 2.105 G. The Hearing Examiner finds that this tardiness did not prejudice any interested pary and therefore, was a technical rather than substantial non-compliance.

7. The record remained open through August 15, 1980 for the receipt of written comments and statements, the period having been extended through that

date by order of the Hearing Examiner at the close of the hearing. Nineteen public comments and a final statement from the Department were submitted through the close of business on August 15, 1980.

Statutory Authority

8. The Department cites Minn. Stat. §§ 245.61-69 (1979 Supp.), 252 A.01-.21 (1978), 253 A.01-.21 (1978 and 1979 Supp.), 256 E.01-.12 (1979 Supp.), 252.28, subd. 1 (1978), 393.07 (1978 and 1979 Supp.), and 245.781-.812 (1978 and 1979 Supp.) as the statutory authority for adoption of the proposed rule amendments.

These legislative enactments deal with the general powers of the Department, mental retardation protection, hospitalization and commitment, community social services, duties of the Commissioner of Public Welfare, the public child welfare program, and public welfare licensing.

In written commentary received on August 15, 1980, Barbara J. Blumer, Esq., an attorney with the firm of Broeker, Hartfeldt, Hedges & Grant, representing the Lutheran Home for the Mentally Retarded of Belle Plaine, Minnesota, challenged the Department's statutory authority to adopt proposed 12 MCAR § 2.185 D.4. (the need for and reasonableness of which is discussed in detail later in this Report). The proposed section deals with need determination responsibilities of county boards, and Ms. Blumer essentially argues that the Legislature has not granted the Department the authority to adopt rules linking an approval or rejection of a license application to a determination of need, as provided in the proposed section. However, under Minn. Stat. § 252.28, subd. 1 (1978), the Commissioner of Public Welfare may determine the need, location, and program of public and private residential and day-care facilities and services for mentally retarded persons. The Public Welfare Licensing Act, at Minn. Stat. § 245.782, subd. 11 (1978), defines "license" as "a certificate issued by the Commissioner authorizing the operator to provide specified services for a specified period of time in accordance with the terms of the license, (the Public Welfare Licensing Act), and the rules and regulations of the Commissioner." The Hearing Examiner finds that the Department's authority to make rules regarding specific standards for how to show or present the need for a facility for mentally retarded persons is implicit in the legislative delegation to the Commissioner of Public Welfare of the power to determine the need for such facilities. The statutory definition of "license" leaves no doubt that any issuance of a license must be in accordance with the Department's rules. The Hearing Examiner therefore finds that the Department has statutory authority to adopt rules linking licensure to need.

The Hearing Examiner further finds that, in all other respects, the Department has documented its statutory authority to adopt the proposed amendments.

Discussion of the Proposed Amendments

9. 12 MCAR § 2.185 has existed in its present form since December 12, 1977. Since that date, various legislation has been passed affecting local board responsibilities to mentally retarded individuals in Minnesota. The amendments offered in this proceeding are an effort by the Department to respond to that legislation by bringing 12 MCAR § 2.185 into conformity with the new legislative enactments enumerated in Finding 8 above. The proposed amendments, many of which are clerical in nature and proposed only to clarify existing rules, are discussed in detail below. The Hearing Examiner has chosen to

discuss the proposed amendments in the order in which they appear in the rule, unless otherwise mentioned. The Report does not address the many renumbering changes which will have to be made before final adoption.

10. The Department proposes to changes the rules' title to "County Board Or Human Service Board Responsibilities To Individuals Who Are Or May Be Mentally Retarded." The Hearing Examiner finds the change in title as proposed to be needed and reasonable.

11. Subsection A.1. is proposed to be added in order to cite the legislative enactments which authorize adoption of the rules. The Hearing Examiner finds this addition to be necessary and reasonable.

12. In an effort to implement Minn. Stat. § 256E.02 (1979 Supp.), as it applies to mentally retarded individuals, the Department originally published a proposal to re-word the last sentence of subsection A.2. to read:

> "This rule shall not be construed as requiring expenditures of money that is not made available by the county board for mental retardation services."

In response to public commentary, the Department now proposes that sentence to read:

> "This rule shall not be construed as requiring expenditures of money that is not made available to the county board from all available resources for mental retardation services."

changed p. 1.

The Hearing Examiner finds the final proposal to be clarifying in nature and not a substantial change and that the amendment as finally proposed is necessary and reasonable.

13. Subsection A.4. deals with the definition of terms used throughout the rule. Definitions for the terms "case management", "client", "commissioner", "community social services", "county board", "need determination", "person who may be mentally retarded", "program", and "service" are not in the present rule. The Hearing Examiner finds inclusion of these definitions to be necessary, and the Department has demonstrated the reasonableness of each of these definitions as originally published, with the exception of the definition for "person who may be mentally retarded". In response to public commentary, the Department proposed, in its final submission, to amend that definition by striking the words "physical condition or trauma" and substituting the words "accident or physical trauma (excluding such conditions as mental illness, chemical abuse, senile elderly, and debilitating diseases such as muscular dystrophy and multiple sclerosis)". The Hearing Examiner finds that this proposal is a clarification and not a substantial change, and that the definition of "person who may be mentally retarded" as finally proposed is necessary and reasonable. For reasons of clarity, the Hearing Examiner suggests that "senility" be substituted for "senile elderly" in the rule as finally adopted.

complied p. 4

The Department also proposes changes in already existing definitions for "community mental health board", "day facility", "individual program plan", "individual service plan", "local social service agency", and "residential facility". The Hearing Examiner finds the changes in these definitions as originally published to be necessary and reasonable.

The Hearing Examiner suggests that the definitions in subsection A.4. be re-arranged in alphabetical order.

complied p. 1-5

14. The Department has proposed some amendments to Section B. of 12 MCAR 2.185, which Section establishes the standard for provision of services to men-

tally retarded persons. All the amendments to this Section, as originally published, are proposed for reasons of clarity and are ably justified in that portion of the Department's Statement of Need and Reasonableness dealing with changes in this Section. That portion of the Statement of Need and Reasonableness (bottom of page 7) is therefore incorporated herein by reference, and the Hearing Examiner finds that the proposed amendments are necessary and reasonable.

In response to public commentary suggesting addition of a requirement to notify county planning bodies whenever community facilities are not available, the Department proposed, in its final submission, to add a new subsection, B.3.d., at the end of Section B. It reads:

> "d. When placement is made in a public residential facility because a vacancy in a community residential facility does not exist, the county planning body (D.2.) shall be informed of such need."

added p.7

The Hearing Examiner finds that the proposed addition is not a substantial change from the rule as originally published, and that its inclusion under Section B. is necessary and reasonable.

15. The Department originally published many proposed amendments for Section C. (now titled "Responsibilities of the Local Social Service Agency."), including a proposed change in its title, with a view to clarifying the meaning and intent of the Section. The Department's presentation of facts supporting the proposed amendments to this Section is contained on page 8 of the Statement of Need and Reasonableness, which page is hereby incorporated herein by reference except as it relates to specific subsections discussed below. All originally published amendments to Section C. of 12 MCAR § 2.185 not discussed below are found by the Hearing Examiner to be needed and reasonable.

In its final submission, the Department proposed insertion of the phrase "to this requirement" after the word "Exception" in the second sentence of C.1.d. The change is clarifying in nature and not a substantial change. The Hearing Examiner finds the amendment of subsection C.1.d. as finally proposed to be necessary and reasonable.

added p.8.

In response to a great deal of negative reaction from the public at the hearing and in written comments, the Department, in its final submission, proposed dropping the phrase "if such services can be obtained within reasonable travel distance" from the end of subsection C.2.c.(2). The Department has now acknowledged that elimination of the phrase brings the subsection into conformity with a legislative intent to provide Developmental Achievement Center services to all eligible persons, as found at Minn. Stat. §§ 252.21 (1979 Supp.), 252.23 (1978), and 252.26 (1979 Supp.). The deletion finally proposed is not a substantial change because it reflects legislative intent. It is the opinion of the Hearing Examiner that Minn. Stat. § 252.26 (1979 Supp.) deals with the problem of transportation of mentally retarded persons to Developmental Achievement Centers independently, thus obviating the need to deal with the problem by rule. The Hearing Examiner finds the proposed deletion, and the subsection as finally proposed, to be necessary and reasonable.

deleted p.10

With respect to subsection C.3., the Department has made some final proposals regarding the clarifying amendments originally published and, in some instances, further changing the present subsection. At C.3.a., the Department proposes in its final submission to add the phrase "of the family" after the

p.11

word "representative". With respect to C.3.d., the Department proposes to add the clause "and take the lead in coordinating such planning when the client is receiving services from more than one provider." at the end. Regarding C.3.e., the final proposal includes adding the phrase "Out of home" at the beginning of the subsection, and striking the words "residential" and "12 MCAR 2.034" from the first sentence. The word "financial" (originally proposed as a substitute for "legal") has been struck from the final proposal and replaced by "social service" in subsection C.3.f. The Department also proposes addition of the phrase "Clients shall be informed that" at the beginning of C.3.h. The Hearing Examiner finds all of the changes advanced in the Department's final submission and detailed in this paragraph to be clarifying in nature and not substantial changes. The Hearing Examiner finds that the amendments as finally proposed for subsection C.3. are necessary and reasonable in order to clarify the administrative requirements of 12 MCAR § 2.185.

added p. 11
added p. 11
deleted p. 11
changed p. 12
added p. 12

16. It is the goal of the Department to greatly expand Section D of 12 MCAR § 2.185, which presently deals with responsibilities of the Community Mental Health Boards or Human Service Boards to mentally retarded individuals. Minn. Stat. § 256E.03, subd. 2 (1979 Supp.), transferred these responsibilities to county boards, who may delegate those responsibilities to community mental health boards, and this new legislation is reflected in proposed amendments to the lead paragraph of the Section. The Hearing Examiner finds the proposed amendment to that paragraph to be needed and reasonable.

The Department originally proposed amendment to subsection D.1. for clarification purposes, and in response to commentary from Michael Weber, Director of Community Services for Hennepin County, further amended the clarification in its final proposal. That subsection, as finally proposed, reads:

> "The county board shall insure opportunity for citizen participation, including representatives of users of services, in accordance with Minn. Stat. § 256E.09, subd. 2, in the planning of service delivery. The county board shall also insure opportunity for the involvement of local social service agencies, local developmental disability councils, public and private residential and daycare facilities and other service providers and advocacy organizations in the coordination of service delivery."

so amended p. 13

The Hearing Examiner finds that the amendment as finally proposed does not constitute a substantial change from the amendment as originally published, but merely clarifies that citizen participation is necessary in matters of planning, and that in matters of coordination of service delivery, relevant service providers and advocate organizations are necessary. The Hearing Examiner finds the amendment to subsection D.1., as finally proposed, to be reasonable and necessary.

The Department originally proposed a clarifying amendment to subsection D.2., and in its final proposal, further clarified the concept of "professional persons" by proposing the subsection to read as follows:

> "The county board shall employ a professionally qualified person who has at least a bachelor's degree and experience in a field related to the treatment and care of persons who are mentally retarded. This person shall coordinate service delivery to mentally retarded in the county and develop a service plan."

so amended p. 13

The Hearing Examiner finds that the final proposed amendment is not a substantial change from the amendment as originally published, and that its adoption

is reasonable and necessary. The Hearing Examiner suggests that the word "individuals" be inserted after "mentally retarded" in the final sentence for purposes of clarity. complied p. 13

Subsections D.2.a.-d. are clarified by proposed amendments published in the State Register. The Hearing Examiner finds those proposals to be necessary and reasonable with respect to these subsections.

Subsection D.2.d. was also clarified by the Department through proposed amendments published in the State Register. Pursuant to a suggestion made at the hearing by Attorney Anne Henry of Legal Advocacy for Developmentally Disabled Persons in Minnesota, the Department further clarified this subsection in its final proposal by advancing the following language:

> "The county board shall provide or arrange for social services needed, as specified in the County Social Services Plan, within the means available from all sources, as provided by the county board."

so amended p. 14

The amendment as finally proposed is a clarification of the amendment as originally published in that it provides consistency with the addition finally recommended to subsection A.2. The amendment as originally published has not been substantially changed. The Hearing Examiner finds the amendments to this subsection as finally proposed to be needed and reasonable.

The Hearing Examiner finds the proposed deletion of subsection D.2.e. and the clarifying amendments proposed for subsection D.3. to be necessary and reasonable due to the assignment of responsibilities to the county board(s) under the Community Social Services Act.

17. In the amendments as proposed in the State Register, the Department proposed to strike the current subsection D.4. and replace it with an extensive, detailed subsection entitled "Need Determination Responsibilities of the County Board". This extensive revision expands on the provision in the current subection D.4. requiring the "board" (the county board under the amendments as proposed) to submit a letter of recommendation to the Commissioner of Public Welfare concerning the need, location and program for facilities and services seeking licensure under Minn. Stat. § 252.28. The amended subsection, as proposed, lays out the scheme providing for specific information, definite procedures, and determination of need criteria in an effort to set up an effective determination of need process between the applicant (facility or service), the county board, and the Commissioner. The Hearing Examiner finds that the general goal of the proposed revision is necessary, and further finds that the specific provisions of 12 MCAR § 2.185 D.4. are reasonable as originally published, except as discussed below.

At the hearing, the Department proposed to insert the following sentence between the two sentences originally published in proposed subsection D.4.c.(2):

> "The notice of the Commissioner's decision shall contain notice of the right to appeal that decision, pursuant to section D.4.c.(4) below."

inserted p. 18

The Hearing Examiner finds this proposed addition to be clarifying in nature and not a substantial change from the subsection as originally published. The Hearing Examiner further finds the proposed addition to be needed and reasonable.

The Department's other amendment proposed for the first time at the public hearing was addition of a subsection, D.4.c.(4), at the end of subsection D.4. The addition reads:

> "Determination of need may be appealed in accordance with provisions of Minn. Stat. Chapter 15. Notice of appeal must be served upon the Commissioner within 30 days of receipt of notification of the Commissioner's decision."

added P. 18

The Hearing Examiner finds that this proposal is clarifying in nature and not a substantial change from the amendments as originally published. The proposed final subsection D.4.c.(4) is further found to be necessary and reasonable to ensure consistency with subsection D.4.c.(2).

In response to extensive commentary suggesting changes in subsection D.4.c., as originally published, the Department proposed several changes in that subsection in its final submission. The Hearing Examiner finds that the amendments as finally proposed are not a substantial change from the subsection as originally published, since the intent of the originally published subsection (setting criteria for need determination) has not been changed.

In specific, the Department now proposes to strike criteria (1), (2) and (3) under D.4.c.(1)(e), and replace them with a single criterion, (1), which will read as follows:

> "No facility for more than eight persons shall be approved unless it can be clearly shown that the needs of the residents will be better served in a larger facility and only if the size of the living units (including bedrooms, living rooms, dining room, and kitchen) are for no more than six persons. Meals would not necessarily have to be prepared in each living unit, but kitchen facilities should be available for each living unit."

So amended P. 17

In addition, the Department now proposes to amend subsection D.4.c.(1)(f) by striking "The following criteria shall apply:" and by striking subsection D.4.c.(1)(f)(1) in order to achieve consistency with D.4.c.(1)(e) as finally proposed.

deleted P. 17

At D.4.c.(3), the Department proposes insertion of the phrase "that may require change in staffing or remodeling" after the word "service" in the first sentence of that subsection.

added P. 18

The Hearing Examiner finds the above proposals for subsection D.4.c. to be necessary and reasonable. He also suggests that subsection D.4.b., as finally adopted, include a comma after "The county board" and insertion of the word "to" between the words "subject" and "license" in the first sentence for reasons of clarity and proper grammar.

complied P. 16

18. Section E. of 12 MCAR § 2.185 ("Service Categories") specifies the range of direct and indirect services needed for a service delivery system in an identified geographical area of Minnesota for that area's mentally retarded population, and is designed to assure their delivery. When the amendment package was originally proposed, the Department sought to eliminate the entire Section from 12 MCAR § 2.185 because the Commissioner and his staff are in the process of developing a single set of definitions of community social services for inclusion in a separate rule. This proposal was heavily criticized because of the possibility that an interim period or gap of time could result between the deletion of Section E. and the adoption of its replacement, thus leaving the service categories, and assurance of their delivery, uncertain.

In its final submission, the Department withdrew the proposed deletion of Section E. and proposed to restore it in its entirety. The end result is not a substantial change because the rule currently in effect will continue. The Hearing Examiner finds the proposed continuation of 12 MCAR § 2.185 E. to be necessary and reasonable.

19. In its original proposal, which included deletion of 12 MCAR § 2.185 E., the Department proposed an additional section, which reads:

> "E. General.
> The provisions of this rule shall be severable. If any clause, sentence or provision is declared illegal or of no effect, the validity of the remainder of this rule and its applicability shall not be affected."

The Hearing Examiner finds this proposed Section to be necessary and reasonable and recommends its final adoption at the end of the rule, designated as Section "F." complied p. 2

CONCLUSIONS

1. That due, timely and legally adequate notice of the hearing in this matter was properly served and published by the Department.

2. That the Department has met the procedural requirements of Minn. Laws 1980, ch. 615, § 6, subds. 4-4f (to be codified as Minn. Stat. § 15.0412, subds. 4-4f) and all other procedural requirements of law or rule; the procedural irregularity noted at Finding 6 is technical in nature and no corrective action is needed in the absence of any evidence of prejudice to interested parties.

3. That the Department has demonstrated its statutory authority to adopt the proposed rule amendments within the meaning of Minn. Laws 1980, Ch. 615, § 6, subd. 4c (to be codified as Minn. Stat. § 15.0412, subd. 4c), Minn. Stat. § 15.0412, subd. 1 (1978), and all other substantive requirements of law.

4. That the Department has demonstrated the need for and reasonableness of the proposed rule amendments by an affirmative presentation of facts in the record within the meaning of Minn. Laws 1980, ch. 615, § 6, subd. 4c (to be codified as Minn. Stat. § 15.0412, subd. 4c).

5. That the additions to the proposed rule amendments which were proposed after publication of the rules in the State Register are not substantially different from the rules as published in the State Register within the meaning of Minn. Laws 1980, ch. 615, § 6, subd. 4d (to be codified as Minn. Stat. § 15.0412, subd. 4d).

6. That in those instances where the Agency has suggested, subsequent to publicaton but prior to the close of the record, that certain modifications be made to its proposals as originally published in the State Register, the Findings and Conclusions herein are based upon the assumption that those modifications suggested by the Agency will be adopted unless specifically stated otherwise in the Findings. Should the Agency not adopt any of those modifications, it must resubmit the record to the Hearing Examiner for appropriate Findings and possible submission by the Hearing Examiner to the Chief Hearing Examiner for his approval pursuant to Minn. Laws 1980, Ch. 615, § 6, subd. 4d (to be codified as Minn. Stat. § 15.0412, subd. 4d).

7. That any Findings which might properly be termed Conclusions, and any Conclusions which might properly be termed Findings are hereby adopted as such.

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the proposed rule amendments be adopted consistent with the Findings and Conclusions made above.

Dated this 15th day of September, 1980.

Richard C. Luis

RICHARD C. LUIS
Hearing Examiner

DPW Exhibit No. 3

File No.

Date 7/28/80

3

PROPOSED RULE

~~DPW-185~~ 12 MCAR 2.185 ~~Community Mental Health Board and~~ County Board ~~Welfare~~ or Human Service Board Responsibilities to Individuals Who Are or May Be Mentally Retarded.

A. Introduction.

1. This rule is promulgated pursuant to Minn. Stat. §245.61 to .69, 252A.01 to .21, 253A.01 to .21, 256E.01 to .12, 252.28, 393.07, and Minn. Stat. §245.781 to .812.

~~1.~~ 2. This rule governs the planning and provision of services to all individuals who are or may be mentally retarded. In addition, provisions of Minn. Stat. #252A.01 to Minn. Stat. #252A.21, Mental Retardation Protection Act, are applicable to those mentally retarded persons under guardianship or conservatorship of the Commissioner. All financial resources available to agencies affected by this rule for the mentally retarded shall be expended in accordance with this rule. This rule shall not be construed as requiring expenditures of money that is not made available by the county board for mental retardation services.

3. The purpose of this rule is to establish minimum service standards for county boards and human service boards in the provision of case management and the planning, coordination and development of services for all individuals who are or may be mentally retarded.

4. Definitions

a. Case management: The provision of direct services to and with the involvement of the client, which includes diagnosis, assessment of client needs and development of an individual service plan, implementation of the individual service plan, evaluation and payment for services when the individual, or parent of a child under 18 years of age, is unable or not required to pay. When the client is a ward of the Commissioner, the provisions of Minn. Stat. §252A.01 to .21 are also applicable.

b. Client: A child or adult who is or may be mentally retarded and in need of services as provided in this rule.

c. Commissioner: The Commissioner of Public Welfare and includes any duly authorized representative of the Commissioner.

~~a.~~ d. Community mental health board: ~~Local area board or human service board which receives grant in aid from the state agency, to plan for and facilitate programs in mental retardation and assure delivery of services.~~

The local board established under Minn. Stat. §245.66 and authorized by the county board to facilitate and implement mental retardation programs and services. If no such board is established by the county board, then the county board itself shall assume the responsibilities of a community mental health board.

e. County board: That body of duly elected officials responsible for the governance of its county under the authority of Minn. Stat. §375.02 to .55. Where a human service board has been established under Minn. Stat. §402.02-.10, it shall be considered to be the county board, for purposes of this rule.

~~b.~~ f. Day facility: ~~Placement less than 24 hours per day outside the home which provides~~ Out-of-home setting licensed to provide training in self-care, remedial, developmental, or social skills~~.~~, on a regular basis for periods of less than 24 hours per day.

~~c.~~ g. Local social service agency: A ~~local~~ local agency ~~under the authority of the county welfare board~~ designated and authorized by the County Board or ~~human service board which is~~, the Human Service Board, ~~responsible for social services and income maintenance.~~ to be responsible for providing social services.

~~d.~~ h. Mentally retarded person: A mentally retarded person refers to any person who has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and manifested during the developmental period.

(1) Intellectual functioning shall be assessed by one or more of the professionally recognized standardized tests developed for that purpose: significantly subaverage refers to performance which is approximately two or more standard deviations from the mean or average of the tests.

(2) Adaptive behavior shall be determined through the use of published scales, or by a combination of pertinent test data, professional observations, and the utilization of all available sources of information regarding the person's behavior which indicates the effectiveness or degree with which the individual meets the standards of personal independence and social responsibilities expected of his/her age and peer cultural group.

i. Person who may be mentally retarded:

(1) A child under 18 years of age whose behavior demonstrates significant deficits in adaptive behavior concurrently with subaverage intellectual functioning, who is in the process of diagnosis, or for various reasons, a diagnosis cannot be determined or for who a diagnosis may not advisable because of age.

(2) An adult 18 years of age or older who has not been diagnosed as mentally retarded during the developmental period of his life, and who, for reasons of physical condition or trauma, has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior such as to require supervision and protection for his welfare.

j. Program: A formal continuum of care that is a culturally relevant and coordinated combination of services, with clear goals and measurable objectives. A program is directed toward meeting the needs of one specified disability group and the individuals within that group, allowing for ready movement of clients among appropriate services.

k. Service: A specific, identifiable, goal-related activity designed to carry out a program.

~~e.~~ l. Residential facility: A setting out ~~Out~~ of ~~family~~ the clients home ~~setting providing~~ licensed to provide care, food, lodging, and provide training in self-care, remedial, developmental or social skills.

(1) Private facility: Profit and nonprofit licensed facilities for mentally retarded clients.

(2) Public facility: Licensed state hospitals (also known as institutions) for mentally retarded clients.

~~f.~~ m. State agency: Minnesota Department of Public Welfare.

~~g.~~ n. Individual service plan: An analysis by the local social service agency~~,--for~~ of services needed by the client, including identification of the type of residential placement, if needed and the general type of program required by the client to meet the assessed needs within a specified period of time.

~~h.~~ o. Individual program plan: A detailed plan of the service provider setting forth both short-term and long-term goals with detailed methods for achieving movement toward the individual service plan of the local social service agency. ~~(Rule 34 standards and ICF/MR regulations govern this in specific detail.)~~

p. Community social services: Those services as authorized under Minn. Stat. 256E.03, Subd. 2.

q. Need determination: The determination by the Commissioner of need, location and program of public and private residential and day care facilities and services for mentally retarded children and adults (§252.28, Subd. 1).

B. ~~Standards for~~ The following standards shall be applicable in the planning and provision of services~~:~~ to individuals who are mentally retarded.

~~1.--Services to individuals who are mentally retarded shall be based on the following standards:~~

~~a.~~ 1. To provide the ~~person who is mentally retarded~~ client with a normal existence. If this is not possible, to provide the ~~mentally retarded~~ person with the alternative which is least restrictive. This includes making available to ~~him/her~~ the client patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

~~b.~~ 2. To provide the ~~person who is mentally retarded~~ client with an individual service plan which is designed to acquire new and progressively difficult skills. Such plan must take into consideration the presentation of learning and developmental experience appropriate to ~~his/her~~ client adaptive behavior levels, physical condition and degenerative status.

3. The individual service plan ~~for the mentally retarded person~~ must be based on a comprehensive assessment of needs, and annual evaluations to determine appropriateness and effectiveness of the individual service plan.

~~(1)~~ a. Providing assistance and appropriate support services to enable ~~him/her~~ the client to live in ~~his/her~~ the person's home.

~~(2)~~ b. Providing a community-based private residential facility with appropriate services when the ~~mentally retarded~~ person must leave ~~his/her~~ home for a specified purpose and period of time.

~~(3)~~ c. Providing placement in a ~~state hospital~~ public residential facility when the ~~mentally retarded~~ person cannot be served at home or in the community for a specified purpose and period of time.

C. ~~Responsibilities of the local social service agency:~~ Responsibilities of the county board for case management services to mentally retarded indivi-

duals. These responsibilities may be delegated to the local social service agency pursuant to Minn. Stat. §256E.08, Subd. 2 and 4. Since it is a universal practice for the county board to delegate these responsibilities to the local social service agency, Section C will refer to "local social service agency" in place of "county board".

1. Diagnosis of mental retardation.

a. The local social service agency has the primary responsibility for insuring prompt diagnosis of mental retardation, utilizing professionally qualified staff, and professional information and assistance from other sources, to secure diagnostic information.

b. The local social service agency shall determine whether the individual is ~~make determination regarding the finding of mental retardation in the individual client or a finding that the person~~ or may be mentally retarded. ~~based upon interdisciplinary procedures identified in other sections of this rule.~~ Such determination may be appealed to the Commissioner ~~of Public Welfare.~~ , pursuant to Minn. Stat. §256.045 as a social service appeal.

c. The following ~~information~~ is required for diagnosis of mental retardation:

(1) ~~Diagnosis~~ Determination of intellectual functioning ~~by one~~ through ~~or more of the standardized~~ tests ~~developed for that purpose (and~~ administered by a psychologist who is qualified in the diagnosis and treatment of mental retardation~~)~~. ~~(In parenthesis, from MR Protection Act.)~~

(2) ~~Diagnosis~~ Determination of adaptive behavior on the basis of ~~a combination of pertinent test data which measure aspects of behavior, professional observation, and utilization of all~~ available ~~sources of~~ information regarding the person's everyday behavior.

(3) Medical examination prepared under the direction of a licensed physician~~, and which directs attention to~~ including, but not limited to sight, hearing, seizure problems, ~~etc.~~ and physical disabilities.

(4) Report by a social worker experienced in working with mentally retarded persons on the client's social history and adjustment.

d. Diagnositic review shall be completed ~~made~~ when significant changes in behavior or functional levels occur, and at intervals not exceeding two years' duration. Exception ~~can~~ may be made ~~in the case of~~ when adults who have been in a service plan for a period of ten or more years, and the original diagnosis has been twice conformed. In such cases if there has been no significant change in behavior or functional level, diagnositic review ~~can~~ shall be ~~accomplished~~ completed at intervals not exceeding four years' duration.

2. Assessment of client needs and development of individual service plan.

a. The local social service agency shall assist any person needing help who is or may be mentally retarded by assessing that person's needs and subsequently planning to meet those needs with the cooperation and involvement of the client, parents, relatives or guardian.

b. The following information, ~~when appropriate,~~ in addition to the ~~diagnosis~~ diagnostic information, ~~is required~~ shall be considered in ~~order to determine~~ determining the individual service plan~~,~~. If any of this information does not exist, that fact shall be documented in the individual service plan:

(1) Family history.

(2) Medical, prenatal, and birth history.

(3) Early development history.

(4) School reports indicating behavior and functional levels.

(5) Psychiatric evaluation, if indicated by the other reports.

(6) Vocational evaluation reports.

(7) Observations and interviews about family and the environment.

c. The local social service agency shall, in cooperation with the client and parents and/or guardian, develop an individual service plan which shall include:

(1) The Minnesota Developmental Programming System, or other instrument of comparable validity and reliability, shall be used to provide a standardized behavioral assessment prior to development of an individual service plan.

(2) Services to be provided shall be specifically individualized to meet the client's needs. ~~Daytime activity~~ Developmental Achievement Center services, shall be provided ~~for preschool children who are mentally retarded or in the process of diagnosis, and adults,~~ when determined appropriate in the individual service plan, if such services can be obtained within reasonable travel distance.

(3) Provision for implementation of the individual service plan and arrangement for appropriate services.

(4) Provision for ensuring the delivery of service as provided in the individual service plan.

(5) Evaluation, with the assistance of qualified individuals, of the client's progress as described in the client's individual service plan.

(6) Payment for services when the ~~individual,~~ eligible client or parent of a child-client under 18 years of age, is unable or not required to pay.

3. The individual service plan shall be designed to provide services to the client in ~~his/her home~~ the client's home, and to strengthen family relationships, capabilities and responsibilities when placement in a day or residential facility is necessary. Such placement shall be made by the local social service agency in order to carry out the individual service plan.

a. When placement in a day or residential facility is necessary, the local social service agency shall be responsible for planning with the client, ~~his/her~~ the family or representative, the residential or day facility resources, and the public school, if the client is of school age.

~~(1)~~ b. Arrangements for placement in a public or private day or residential facility ~~or state hospital~~ shall be made by the local social service agency. When in the facility, the ~~person~~ client continues to be the client of the local social service agency.

~~(2)~~ c. Acceptance by the public or private facility ~~or state hospital~~ shall be based on the goals and objectives of the individual service plan of the local social service agency, as agreed upon with the client, parent, and/or guardian and as indicated by subsequent assessment and review. Acceptance shall constitute agreement that the public or private facility ~~or state hospital~~ can carry out the goals and objectives of the individual service plan within a specified period of time.

~~(3)~~ d. When a ~~mentally retarded person~~ client is accepted in a day or residential facility, the facility staff shall be responsible, within 30 days of admission, for the development of an individual program plan based on the individual service plan of the local social service agency. The local social service agency shall participate in the development of the facility's individual program plan.

~~(4)~~ e. Placement of ~~mentally retarded persons,~~ clients or persons in the process of diagnosis, is restricted to residential facilities licensed under ~~DPW Rule 34~~ 12 MCAR 2.034 and other applicable state agency rules or their successor. Exception can be made (1) in the case of certification of need for hospitalization or need for a skilled nursing facility for skilled nursing care on a 24 hour per day basis, or (2) when the individual service plan calls for placement in a licensed or certified foster home for four or fewer residents.

~~(5)~~ f. When the local social service agency places a client in a private residential facility located outside of that county, formal arrangements, noted in the individual service plan, must be made with the host county social service agency to carry out certain services. Primary responsibility, however, remains with the agency of ~~legal~~ financial responsibility~~.~~, as specified in Minn. Stat. #256E.08, Subd. 7.

~~(6)~~ g. Counseling shall be provided or arranged by the local social service agency to the individual, his parents or guardian as needed. The local social service agency may request assistance of the community mental health ~~director.~~ board.

~~(7)~~ h. Appeal may be made to the Commissioner pursuant to Minn. Stat. §256.045 as a social service appeal. ~~of the state agency.~~

D. Responsibilities of the county board for services to mentally retarded. ~~Community Mental Health Board or Human Service Board.~~ These responsibilities may be delegated to a community mental health board pursuant to Minn. Stat. §256E.08, Subd. 4, and §245.61 to .69, and Chapter 402.

1. The ~~community mental health~~ county board ~~or human service board~~ shall ensure opportunity for the involvement of local social service agencies, local developmental disabilities councils, ~~state institutions~~ public and private residential and day care facilities and other service providers and advocacy organization in the planning and coordination of service delivery.

2. The county board shall employ a ~~Qualified Mental Retardation Professional Person~~ professionally qualified persons who has experience in treating or working with persons who are mentally retarded to coordinate service delivery to mentally retarded in the ~~area~~ county and develop a service delivery plan. ~~for the area served on a biennial basis.~~

a. The county board shall take the lead in planning and development of services not available through service providers, public and private agencies, educational and judicial agencies.

b. The county board shall identify the social services ~~categories~~ available in and outside of the ~~geographical area~~ county for its mental retardation population, including those provided by private individuals or agencies, local public agencies and public facilities ~~state institutions.~~

c. The county board shall identify in priority of need order the social services that are not available to its mental retardation population.

d. The county board shall provide or arrange for social services ~~categories~~ needed, as specified in the ~~service delivery plan~~ County Social Services Plan, within the means provided ~~in grants in aid by the state agency.~~ by the county board.

~~e.--Copies of the plan shall be submitted to the state agency in approved format on or before July 1 of the year proceding the biennial legislative session for the purposes of budget planning and legislative proposals. Copies of the plan shall be made available to agencies involved in related planning activities.~~

3. The county board shall provide psychological and psychiatric diagnostic evaluation, client and parental counseling and assistance in care planning for persons who are or may be mentally retarded as requested by the client or the local social service agencies in the ~~area~~ county served by the board.

~~4.--The board shall submit a letter of recommendation to the Commissioner concerning the need, location and program for facilities and services applying for license under Minn. Stat. #252.28.~~

4. Need Determination Responsibilities of the County Board.

a. The county board shall obtain need assessment data and other available information concerning needs of the mental retardation population in the county.

(1) The county board shall provide such data and information to parties interested in developing a facility or service for mentally retarded clients.

(2) Applications for need determination for a proposed facility or service to be located in the county shall be prepared by the applicant and reviewed by the county board.

(3) Applications shall include, but are not limited to, the following:

(a) Applicant's name, address, telephone number; proposed location of the facility or service; number, sex and age range of clients to be served; description of proposed facility or service.

(b) Functional level of clients to be served; description of physical, sensory, behavioral conditions.

(c) Program plan; developmental, education, vocational services that will be available outside of the facility (if residential).

(d) Sources of clients; numbers of clients to be served from named facilities such as state hospital, general intermediate care facility, skilled nursing facility, intermediate care facility for mentally retarded, foster home, natural home.

(e) Name(s) of other counties to be served by applicant; if so, the applicant shall submit evidence to the board that those counties will make referrals.

b. The county board after consideration of the standards for provision of services (part B, this rule), shall submit a letter of recommendation to the Commissioner concerning local need, location and program for proposed facilities and services subject license under Minn. Stat. 252.28. The letter shall include need data and other information relevant to need for the proposed facility or service, and the applicant's information concerning the proposal.

c. The Commissioner shall make final determination of need, location and program.

(1) After receiving the required information, the Commissioner shall consider the facts, and recommendation of the county board, and other considerations, which shall be:

(a) To protect mentally retarded persons from violations of their human and civil rights.

(b) To assure that such persons receive the full range of needed social, financial, residential and habilitative service to which they are lawfully entitled.

(c) To assure that the location of the facility will not substantially contribute to excessive concentration of community residential facilities within any town, municipally or county of the state.

(d) To assure that clients of public residential facilities who are in need of a small, home-like facility near their family will be admitted to the facility.

(e) To assure that standards for provision of services are carried out, the size of the facility must relate to the needs of the clients for services. The following criteria shall apply:

~~(1) Residential facilities for six shall be considered most desirable when the residents' needs can be met by live-in staff.~~

~~(2) Residential facilities for eight shall be considered most desirable when the residents needs can be met by shift staff.~~

~~(3) Residential facilities for sixteen shall be considered most desirable when the residents have extra-ordinary service needs such as concomitant physical and sensory disabilities, which cannot be economically met in a facility of lesser size. The Commissioner shall determine whether the severity of the physical, sensory or other disability of the residents require the 16-bed size.~~

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(4) The ability of the residents to use community medical, psychological, therapeutic and support services.

(5) The number of residents whose physical, sensory or other disability justifies the employment of special staff by the facility.

(f) To assure that the facility and program plan cost projections are within fiscal limitations, and meet standards of effective program management. ~~The following criteria shall apply:~~ HE 17

(1) Facilities which are not to be for six, eight or 16 residents, must justify that they are as efficient and cost effective as the facilities for six, eight or 16 residents. HE 17

(2) Within 30 days of receipt of the applicant information and recommendation of the county board, the applicant and county board shall be notified of the Commissioner's decision. If approved the Licensing Division of the state agency shall then act upon a license application, and the applicant may seek certification under Title XIX and other funding resources from the state agency.

(3) If a licensed facility requests an increase or decrease in licensed capacity, or change in program of any facility or service, the facility shall apply to the Commissioner directly. No change shall be granted until the county board has an opportunity to comment. The Commissioner shall notify the county board of such a request by sending a copy of the request to the county board. The county shall have 30 days to comment. The Commissioner shall use the same criteria as is specified for original applications.

E. General

The provisions of this rule shall be severable. If any clause, sentence or provision is declared illegal or of no effect, the validity of the remainder of this rule and its applicability shall not be affected.

~~E.--Service-Categories.~~

~~1.--The-following-service-categories,-in-alphabetical-order,-shall-constitute-the-range-of-direct-and-indirect-services-needed-for-a-service-delivery system-in-an-identified-geographical-area-of-the-State-of-Minnesota-for-its mentally-retarded-population.--These-service-categories-shall-be-identified to-assure-delivery-as-needed.~~

~~a.--Activity-program-for-adults.--Activities-which-emphasize-occupational-and-social-goals-which-assist-adults-to-become-as-self-dependent-as possible-and-to-make-constructive-use-of-leisure-time.--They-are-comprehensive and-coordinated-sets-of-activities-providing-personal-care-and-other-services to-adult-mentally-retarded-persons-in-or-out-of-their-own-homes-during-a-portion-of-the-24-hour-day.--Services-may-include-a-variety-of-creative,-social, physical-and-learning-activities-based-upon-an-appropriate-assessment-of-need.~~

~~b.--Assessment-services.--The-systematic-determination-of-pertinent physical,-psychological,-vocational,-educational,-cultural,-social,-economic, legal,-environmental-and-other-factors-of-the-mentally-retarded-person-and his/her-family;-to-determine-the-extent-to-which-the-disability-limits-can-be expected-to-limit-the-person's-daily-living-and-work-activity;-to-determine how-and-to-what-extent-the-disabling-conditions-may-be-expected-to-be-minimized-by-services;-to-determine-the-nature-and-scope-of-services-to-be-provided; to-select-service-objectives-which-are-commensurate-with-an-individual-service plan-of-action.--It-is-to-be-followed-at-whatever-intervals-are-needed-by periodic-reassessment;-services-are-to-be-provided-whenever-necessary-in-the life-of-the-individual.--Assessment-services-are-directed-toward-the-effects of-the-disability-and-toward-maximizing-life-functions-in-the-face-of-remaining-conditions.~~

c.--Basic-developmental-services:--Activities-emphasizing-maturation and-supplementing-the-services-provided-by-parents-or-parent-surrogates.

They-are-comprehensive-and-coordinated-sets-of-developmental-learning activities-conducted-in-or-outside-the-home-during-a-portion-of-the-day.--These services-include-a-variety-of-creative,-social,-physical,-and-learning-activities selected-in-accordance-with-an-appropriate-assessment.--The-focus-is-upon-the developmental-schedule-itself-(individual-program-plan)-and-upon-the-acquisition of-skills-in-self-care.--This-service-should-continue-on-a-sustaining-basis-for these-who-would-otherwise-suffer-loss-of-functional-level.

d.--Case-management-(service-management):--An-expert-person-who-provides-coordination-of-all-the-case-activities-on-behalf-of-the-clients-of-the local-social-service-agency.--The-case-manager-is-held-responsible-for-mobilizing the-resources-needed,-including-especially-those-not-provided-directly-by-his/her-own-agency.--It-is-a-persuasive,-rather-than-an-administrative-role.--Case management-is-provided-by-a-professionally-qualified-individual-(typically-not a-volunteer)-who-has-a-limited-but-assigned-number-of-clients.

e.--Client-information-and-referral-service:--Public-information about-services-and-procedures-in-obtaining-them.--This-service-may-provide referral-activity-directly-or-may-inform-an-inquirer.--This-client-information and-referral-service-may-be-on-a-face-to-face-basis-or-may-be-available-by telephone.

f.--Community-services:--Mentally-retarded-people-are-ordinarily expected-to-make-use-of-the-same-community-services-that-are-used-by-people who-are-not-retareded.--These-services-are-not-detailed-because-they-are-not specialized-on-behalf-of-the-mentally-retarded-population.

g.--Counseling:--A-face-to-face-relationship-with-the-mentally-retarded-individual-and/or-parent,-siblings-or-other-relatives-in-order-to-help the-individual-understand-and-accept-his/her-capabilities-and-limitations, and-to-carry-through-on-a-program-of-adjustment-and-self-improvement.--This requires-knowledge-of-human-behavior-and-the-use-of-special-interviewing skills-to-achieve-specified-goals-mutually-accepted-by-counselor-and-client (or-parent/guardian).--Counseling-is-an-episodic-activity-carried-out-when-the need-arises.--Its-focus-is-upon-the-solution-of-specific-problems.

h.--Diagnostic-services:--Coordinated-services-including,-but-not limited-to,-psychological-services,-social-services,-medical-and-other-services necessary-to-identify-the-presence-of-a-disability,-its-causes-and-its-complications.--Diagnosis-is-a-current-assessment-of-the-client's-condition-and shall-be-a-guiding-factor-in-the-development-of-the-individual-service-plan. Diagnostic-review-is-to-be-made-whenever-necessary-in-the-life-of-the-mentally retarded-person,-according-to-C.1.d.-of-this-rule.

i.--Domiciliary-(residential)-care:--Out-of-home-living-quarters, supervision-and-personal-care-to-persons-needing-such-care-and-services. Domiciliary-care-services-differ-from-special-living-arrangements-by-its higher-degree-of-supervision-and-the-greater-amount-of-personal-care-needed, as-compared-to----Special-living-arrangements.

~~j.--Family-support-services:--Those-services-which-enable-the-family as-a-unit-to-meet-the-family-related-needs-of-the-mentally-retarded-persons. Family-support-services-may-include-any-of-the-other-defined-services.--It-is distinguished-in-that-it-is-given-to-the-family-in-their-homes.~~

~~k.--Follow-along:--A-monitoring-relationship-by-the-local-social service-agency-on-a-life-long-basis-with-retarded-persons-and-their-families, if-needed.--It-is-to-assure-that-changes-in-need,-progression-to-new-levels of-adaptive-competence,-and-the-problems-arising-from-crises-are-recognized and-appropritely-met.~~

~~l.--Job-placement-services:--The-process-of-securing-employment. Competitive-employment-is-employment-offered-under-ordinary-conditions-and-in competition-with-ordinary-employees.--Job-placement-services-needed-by-mentally retarded-persons-are-generally-those-of-securing-and-adjusting-to-a-job,-with no-implication-that-this-is-limited-to-a-single-time-or-period-in-the-life-of the-persons.~~

~~m.--Professional-information-and-referral-service:--An-up-to-date and-complete-listing-of-all-appropriate-resources-which-can-be-made-available and-accessible-to-professional-persons-serving-mentally-retarded-persons-and their-families-so-that-they-can-be-referred-to-the-most-appropriate-and-readily available-resources.--This-kind-of-information-and-referral-services-is-ordinarily-not-used-by-the-client.~~

~~n.--Protective-services:--Social,-legal-and-other-appropriate-services-which-assist-individuals-who-are-unable-to-manage-their-own-affairs-or to-protect-themselves-from-neglect,-exploitation-or-hazardous-situations-without-assistance-from-others-and-to-help-them-exercise-their-rights-as-citizens. Protective-services-may-be-an-adjunct-to-parent-responsibility,-or-they-may-be exercised-in-the-absence-of-the-responsible-parent.--Protective-services-should be-selective-in-scope-and-should-be-limited-to-those-aspects-of-life-function in-which-a-need-is-demonstrated.--(See-Minn.-Stat.-§-252A.01-.21,-MR-Protection Act.)~~

~~o.--Recreation-services:--Planned-and-supervised-leisure-time-activities-designed-to-help-meet-specific-individual-needs-in-self-expression, social-interaction,-athletic-endeavors-and-entertainment;-to-develop-skills and-interests-leading-to-enjoyable-and-constructive-use-of-leisure-time;-and to-improve-his/her-well-being.--The-service-may-include-assistance-to-the-individual-in-his/her-use-and-access-of-normal-community-recreation-activities.~~

~~p.--Service-delivery-system-coordination:--Responsibility-within-a given-community-for-the-provision-of-the-full-range-of-services.--This-is-a planning-and-resource-mobilizing-function-rather-than-a-direct-service-to clients.--It-is-concerned-with-the-structure-and-the-availability-of-services rather-than-with-the-solution-of-personal-problems.--It-must-be-provided-in connection-with-a-multi-service-area-of-authority.--Information-and-referral services-shall-be-provided-in-conjunction-with-service-coordination,-and-the two-are-typically-interrelated.~~

q.--Sheltered-employment:--A-structured-service-providing-partial self-support-through-the-employment-of-the-retarded-worker-under-conditions which-allow-for-low-production-rate;-need-for-special-work-supervision;-inability-to-handle-a-full-range-of-job-duties;-or-need-for-special-job-engineering-and-adaptive-equipment.

r.--Special-education:--A-structured-learning-experience;-based upon-appropriate-assessment-and-through-the-use-of-a-broad-curriculum-of practical-academic-subjects-primarily-designed-to-develop-the-ability-to learn-and-to-acquire-useful-knowledge-and-basic-skills-in-its-earliest-stages. In-its-later-stages;-it-grades-all-theway-through-the-equivalent-of-a secondary-education-and-appropriately-interacts-with-the-occupational-service-system;-such-as-work-adjustment.--Special-education-is-legally-required of-the-public-school-district-acting-either-as-direct-provider-or-as-purchaser-of-the-service.-

s.--Special-living-arrangements:--Living-arrangements-for-persons who-need-some-degree-of-supervision.--Special-living-arrangements-should-provide-at-least-counseling-and-leisure-time-activities-in-addition-to-living arrangements.--The-service-is-for-disabled-persons-who-can-leave-their-place of-residence-for-work;-recreation-or-other-reasons.

t.--Treatment-services:--Interventions-which-halt;-control-or-reverse-those-processes-which-cause;-aggravate-or-complicate-disability.--Interventions-may-include-treatment;-such-as-surgical-procedures;-dietary-controls. comsmetic-therapy;-chemotherapy;-speech-therapy-or-physical-therapy;-directed toward-basic-personal-goals;-dentistry;-and-medical-treatments-as-indicated by-the-needs-of-the-individual-being-served.--Specialized-medical-and-dental care-are-included.

u.--Training-services:--Planned-and-systematic-sequence-of-instruction-in-formal-and-informal-activities-based-upon-appropriate-assessment-and designed-to-develop-skills-in-performing-activities-of-daily-living;-including-self-help;-motor-skills;-and-communications;-to-enhance-emotional;-personal;-and-social-development;-to-provide-experiences-conducive-to-the-acquisition-of-positive-self-concepts-and-desire-to-learn;-and-to-provide-experiences-basic-for-future-productive-activity.--Emphasis-is-upon-those-skills needed-to-function-as-a-member-of-the-community.--This-service-is-not-restricted to-any-particular-age-and-can-be-offered-at-any-appropriate-time-in-the-life of-the-individual-who-is-mentally-retarded.

v.--Transportation-services:--Necessary-travel-and-related-costs-in connection-with-transporting-retarded-persons-to-and-from-places-in-which they-receive-services.--Transportation-also-includes-taking-services-to-the homebound;-delivery-of-raw-materials;-and-finished-products-from-homebound industries-when-needed.--The-use-of-public-transportation-is-included.

w.--Vocational-evaluation:--Assessment-of-worker-characteristics; through-the-use-of-unreal-or-simulated-work-tasks.--The-purpose-is-to-assess occupational-strengths-and-weaknesses;-and-potential-for-vocational-development.--It-also-includes-provocational-evaluation-and-work-evaluation.--This requires-the-use-of-a-rehabilitation-facility-or-similar-controlled-experimental-setting.

x.--Volunteer services.--Volunteer activities by individuals, service organizations and advocacy groups, provide a variety of services on a group or one-to-one basis tha tsupplements and augments services provided to mentally retarded persons.--This may also include participation in advisory committees, advocacy activities and other forms of personal support to individuals.--Such services are not to supplant staff services, and are ordinarily provided by unpaid persons and groups.

y.--Work activity.--It is for those whose productivity is such that they cannot meet the demands of sheltered employment.--For people who need a work setting as part of their program in order to foster a sense of self worth through work while earning a below minimum wage, it legally enables a wage to be paid.--Work activity, in additon, includes a variety of creative, social, physical and learning activities.--Work activity may be provided only in facilities having a Federal Wage and Hour certificate for this purpose.--It differes from activity programs for adults in that there is a significant productive element.--it differs from sheltered employment in that it allows a wage of up to one fourth the standard minimum.

z.--Work adjustment.--Learning activities typically involving real or simulated work tasks and situations.--It is intended to assist a person to develop basic skills, attitudes, motivation, and work habits of the kind needed in competitive employment, sheltered employment or work activity.--It develops social skills needed to function in a work environment.--Its focus is upon basic employability rather than upon the skills of a specific occupation.

ER/hsa

DPW Exhibit No. 11
File No.
Date 7/28/80

AMENDMENTS TO PROPOSED RULE 185 PROPOSED AT THE PUBLIC HEARING ON JULY 28, 1980.

The following sentence is added to D. 4. c. (2): (to be inserted after the first sentence)

The notice of the Commissioner's decision shall contain notice of the right to appeal that decision, pursuant to Section D. 4. c. (4) below. p. 18

The following section was added at D. 4. c. (4):

Determination of need may be appealed in accordance with provisions of Minn. Stat. Chapter 15. Notice of appeal must be served upon the Commissioner within 30 days of receipt of notification of the Commissioner's decision. p. 18

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF AMENDMENTS TO RULE 185 OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE PLANNING AND PROVISION OF SERVICES TO MENTALLY RETARDED PERSONS (12 MCAR 2.185)

AFFIDAVIT OF MAILING

NOTICE OF SUBMITTAL TO THE ATTORNEY GENERAL

LINDA M. NELSON, being first duly sworn, deposes and says:

That on the 13th day of November, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons who had so requested to be notified.

Linda M. Nelson

Subscribed and sworn to before me
this 13 day of November
1980.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

IN THE MATTER OF THE PROPOSED ADOPTION
OF AMENDMENTS TO RULE 185 OF THE
DEPARTMENT OF PUBLIC WELFARE GOVERNING
THE PLANNING AND PROVISION OF SERVICES
TO MENTALLY RETARDED PERSONS (12 MCAR 2.185)

NOTICE OF SUBMITTAL
TO ATTORNEY GENERAL

To all Interested Persons:

Pursuant to your request and in accordance with Minnesota Statutes, Section 15.0412, subdivision 4 and Rule HE 102, PLEASE TAKE NOTICE that the above-captioned rule has been submitted to the Attorney General's Office on November 13, 1980 for review as to form and legality. Pursuant to Rule ATTYGEN 305, any person may question the legality of the above-captioned rule within the (10) days after receipt of the rule by the Attorney General. Thereafter, the Office of the Attorney General shall conduct its review. If you desire to question the legality of the above-captioned rule, you should direct your comments to the Attorney General's Office, G-25 Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155.

If you are interested in determining what changes, if any, were made in the proposed rule after the hearing and before submission to the Attorney General you may contact Ardo Wrobel, Mental Retardation Division, Department of Public Welfare, Centennial Office Building, St. Paul, MN 55155, (612) 296-2160.

Linda M. Nelson

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED
ADOPTION OF AMENDMENTS TO RULE 185
OF THE DEPARTMENT OF PUBLIC WELFARE
GOVERNING THE PLANNING AND PROVISION
OF SERVICES TO MENTALLY RETARDED
PERSONS (12 MCAR 2.185)

STATEMENT OF NEED
AND
REASONABLENESS

INTRODUCTION:

12 MCAR 2.185 (Rule 185) is being amended to conform to Minn. Stat. 245.61 to .69 (1979 Supp.), 252A.01 to .21 (1978), 253A.01 to .21 (1978 and 1979 Supp.), 256E.01 to .12 (1979 Supp.), 252.28, Subd. 1 (1978), 393.07 (1978 and 1979 Supp.), and Minn. Stat §245.781 to 812 (1978 and 1979 Supp.).

A number of laws upon which Rule 185 is based have recently been affected by the passage of new legislation. Therefore, this Rule is being amended in order to bring it into conformance with those statutory amendments. Additionally, the passage of Minn. Stat. §256E (Chapter 324 in the 1979 session) makes necessary a number of changes in the Rule. Further, a number of areas of the Rule are not explicit or detailed enough at the present time (such as determination of need process) and are being expanded and clarified. The following paragraphs are a detailed explanation of the statutory bases which necessitate certain amendments to the Rule.

1. Minn. Stat. §256E.02 states that the purpose of the Community Social Services Act (CSSA) is to establish a system of planning for and providing community social services administered by the board of county commissioners of each county under the supervision of the Commissioner of Public Welfare. Services for the mentally retarded are a community social service which is now the responsibility of the County Boards. As a part of their responsibility, the County Boards under Minn. Stat. §256E.06, now directly govern funding of mental health programs covered by Minn. Stat. §245.61 to .69, welfare services under Minn. Stat. §393.07, and developmental achievement centers (DACs) under Minn. Stat. §252.24.

2. Minn. Stat. §252.28, Subd. 1, authorizes the Commissioner of Public Welfare to determine the need, location and program of public and private residential and day care facilities and services for mentally retarded children and adults. The proposed amendments to Rule 185 delineate detailed procedures by which the Commissioner carries out that authority.

The Rule

Rule 185 implements a variety of statutory mandates to the Commissioner concerning mentally retarded citizens. The Rule establishes a case managment system for individualized program planning which prescribes the process and procedure through which the local county agency carries out a variety of responsibilities. The Rule organizes the various mandates into a single document for ready use, and clearly establishes that responsibility for

decision-making for each individual rests with the county agency of financial responsibility. The case management provisions of Part C, of the Rule, are a programmatic approach to the provision of services to eligible persons by requiring that need for service be established through a process of individual assessment.

The Rule specifies that the needs of individuals, in a collective sense, be assessed and identified in a manner that case managers can secure appropriate resources for their clients. Part D of the Rule, prescribes certain procedures necessary in the planning and coordination of those services, so that the Commissioner's authority to make decisions on need, location and program for statewide services, is clearly tied to the local need determination process.

Rule 185 sets standards to govern the planning and provision of services which preserve and protect the rights of the individual. Part B establishes those standards.

This document does not contain a detailed analysis of all of the laws that express public concern and mandate action for mentally retarded people. However, the following is a narrative explanation of the laws that establish authority for Rule 185, and mandate the promulgation of this Rule:

1. Minn. Stat. §393.07, which established the responsibilities and authority of Welfare Boards concerning social and mental health services, has been affected by the passage of Minn. Stat. 256E.03, the Community Social Services Act. It is this Act which establishes the County Boards of the Commissioners as the ultimate authority for the planning, provision and funding of all forms of social services. Rule 185 delineates the standards by which the services are planned and provided.

2. Minn. Stat. §252A.01 to .21, Mental Retardation Protection Act, establishes state policy concerning mentally retarded citizens, including persons who are under guardianship. General policy that is established in Minn. Stat. §252A.01, states that: "it is the policy of the State of Minnesota to provide a coordinated approach to the supervision, protection and habilitation of its mentally retarded citizens." In furtherance of this policy, sections 252A.01 to 252A.21 were enacted to authorize the Commisisoner of Public Welfare to supervise those mentally retarded citizens who are unable to fully provide for their own needs and to protect such persons from violation of their human and civil rights by assuring that such individuals receive the full range of needed social, financial, residential and habilitative services to which they are lawfully entitled.

3. Remaining sections of the Mental Retardation Protection Act provide for the procedures and rights under guardianship when needed for protection of the individual or public, and §252A.14, establishes that the Commissioner, acting through the county welfare departments, shall seek out those mentally retarded persons who are not under state guardianship and shall advise such persons as to the availablility of suitable services and assistance.

4. The Commissioner, acting through the county agencies (§252A.21, Subd. 2), is limited in determining the placement of individuals under his guardianship in state institutions. Minn. Stat. §252A.11, Subd. 3, provides that the Commissioner does not have the authority to place a ward in a state institution except pursuant to sections 253A.01 to 253A.21, the Hospitalization and Commitment Act. Further, the Commissioner, under §252A.11, Subd. 5, shall exercise his authority over the ward in a manner which is least restrictive of the ward's personal freedom consistent with the need for supervision and protection. Rule 185 clarifies the standards by which the Commissioner, acting through the County Boards, is to exercise these authorities.

5. Minn. Stat. §252A and 253A deal with the development of aftercare plans for persons under commitment and/or guardianship. Rule 185 specifies the procedures by which County Boards are to comply with these statutes.

6. Minn. Stat. §245.68, charges the community mental health boards with responsibility to facilitate and implement programs in mental retardation so as to assure delivery of services. This section requires mental health boards to recommend, facilitate, implement, review, evaluate and obtain financial support for community programs and services for the mentally retarded. If no community mental health board is established, the county board is responsible for these items. This is clarified in the Rule.

7. Minn. Stat. §245.812, concerns the location and zoning limitations placed on facilities for mentally retarded that are licensed by the Commissioner. This action, as well as Minn. Stat. §252.28, Subd. 1, govern the matter of the Commissioner's determination of need, location and program.

The above cited statutes authorize the promulgation of rules, and Rule 185 represents the single rule that addresses the process and procedures through which the above provisions are carried out. It is reasonable to promulgate a single rule through which the various laws can be logically carried out in behalf of mentally retarded citizens, so as to assure a coordinated approach to the supervision, protection and habilitation of Minnesota's mentally retarded citizens.

Proposed Amendments

The proposed amendments to the current Rule 185 are designed to:

1. Designate the County Boards of Commissioners or human service boards with direct responsibility for carrying out the provisions of Rule 185, in accordance with Minn. Stat. §256E.02,

2. Delineate and clarify the need determination process in accordance with Minn. Stat. §252.28,

3. Make changes in wording to accomplish the purposes of the Community Social Services Act, and other changes and additions to make the Rule more understandable and usable.

4. Eliminate the Services Categories in Section E, in order to allow the incorporation of this Section into a standard definition of community social services which will be contained in another rule. This definiton, which is currently in draft form, will combine the service categories for mentally retarded with other disability groups and the Title XX social service definitions.

The Community Social Services Act

The Community Social Services Act is a deliberate step toward more local accountability for reasonable and prudent use of public funds to solve locally identified social problems (Minn. Stat. §256.04, Subd. 1 (d)). However, statute mandates the Commissioner to supervise the county boards through: 1) standard setting, 2) technical assistance, 3) approval of county plans, 4) state planning, and 5) evaluation of community social service programs.

The CSSA is also intended to link local priorities in human services with statewide standards, laws, policies and direction in behalf of mentally retarded citizens. Rule 185 establishes the common framework for local and state efforts toward assuring that retarded persons who are entitled to social services will get the services they need, and that such services are planned and developed on the basis of individually determined need.

The CSSA requires that county social service plans be based on local needs, and the plan be certified by the Commissioner. CSSA allows the counties to determine how much money they will spend on a given social service. Simultaneously, the CSSA requires the Commissioner to establish the standards by which such services will be provided. Agencies affected by the Rule are subject to it, but the Rule does not require expenditures of money not made available by the County Board for mental retardation services.

Rule 185 has been promulgated to be the linking mechanism that governs the expenditure of local, state and federal resources for the individual client. This is done through the process of case management and service planning for retarded persons. A large part of the services the retarded citizens need are under county control. Other services under state agency supervision include public and private residential facilities, cost of care for children who are mentally retarded, family subsidy and construction grants-in-aid. The Commissioner's authority to determine need, location and programs of public and private residential and day care facilities and services for mentally retarded, encompasses services under county control and state agency control. Rule 185 addresses this division of control of responsibility in a clear and reasonable fashion.

Planning

Planning for individual retarded people is not limited to the social services under County Board control, but rather encompasses other services

under state control, and to an important extent, under federal policy and regulations. These factors combine with state laws and policies to govern the direction, use and quality of services at the local county level.

In their total effect, all resources from local, state and federal levels, must be coordinated for individual benefit and long-term welfare. Therefore, the individual must be the ultimate unit of measure of need. Rule 185 is structured to accomplsih this through the specification of procedures and standards.

In Rule 185, Minnesota has taken a leadership role in developing a system of measures of individual needs of clients, which are used at local and state levels in the need assessment purposes.

Rule 185 is structured to further Minnesota State policy (Minn. Stat. §252A.01), which calls for the provision of a coordinated approach to the supervision, protection and habilitation of its mentally retarded citizens. The Rule details the responsibility of the Commissioner in the supervision of those who are unable to fully provide for their own needs by assuring that such individuals receive the full range of needed social, financial, residential and habilitative services to which they are lawfully entitled.

Determination of Need

The proposed amendments to the Rule concerning determination of need, location and program pursuant to Minn. Stat. §252.28, are an essential part of the State policy promoting a coordinated approach to programming for mentally retarded.

The Rule links the need determination responsibilities of the State with county board responsibilites under CSSA. Therefore, Section D. 4, of the proposed Rule, contains specific uniform provisions to enable local county participation in the need determination process. This process is basic to the development of a comprehensive service system for mentally retarded citizens in Minnesota. Therefore, the proposed rule specifies that the need determination process must be completed before an applicant service provider can be licensed under Minn. Stat. §252.28 and 245.781 et. seq. If the applicant seeks to become certified as an Intermediate Care Facility for Mentally Retarded, under Title XIX, the need determination made by the Commissioner is used to substantiate the need to invest federal Title XIX resources for the facility.

Much of the material regarding the need determination process in the proposed Rule is merely an expansion of what is already in the current Rule. It is also drawn from DPW Instructional Bulletin #78-67, which has been in use for some time although not incorporated into the Rule. The proposed Rule carries out the intent of the legislature and is a reasonable interpretation of the statutes.

Section-by-Section Analysis of the Proposed Amendments

A. Introduction

1. Citation of statutes that authorize the Rule.

2. This Rule implements Minn. Stat. §256E.02 as it pertains to the mentally retarded.

3. This Rule implements Minn. Stat. §256E.05 concerning standard-setting for mentally retarded.

4. Definitions:

   a. Case Management: This definition is drawn from the essential provision of Section C. of the Rule. Since the provision of services by the responsible agency under the current Rule has come to be known as case management, the term is defined in relation to the Rule.

   b. Client: This definition is made to simplify reference to persons served.

   c. Commissioner: This definition identifies the meaning of the term in regard to the Commissioner's authority to delegate responsibility for implementing the Rule.

   d. Community Mental Health Board: This definition is changed in accordance with Minn. Stat. §256E.03, Subd. 2, and Minn. Stat. §245.61 which changes the funding source from the Department of Public Welfare to the county board.

   e. County Board: The boards are defined in accordance with Minn. Stat. §256E.02, and incorporates human service boards in the definition.

   f. Day Facility: This definition is intended to more closely fit the definition in Minn. Stat. §245.782, Subd. 5.

   g. Local Social Service Agency: Defined to implement Minn. Stat. §256.08, Subd. 2, regarding assignment of duties of the welfare director as described in Minn. Stat. §393.04.

   h. Mentally Retarded Person: This definition is needed to clarify the target population for which this Rule was developed. The definition is unchanged from the current Rule.

   i. Persons Who May Be Mentally Retarded: This definition allows the local social service agency discretionary flexibility in determining whether a person's functional level is in the range of being mentally retarded. Current Rule 185 authorizes services to persons who may be mentally retarded, however, experience in providing services to such persons has resulted in several requests to define the meaning of the term.

   j. Program, and

   k. Service: Program and Service are defined because these two terms are often used interchangeably. Understanding of the concept of a program is essential to ordering services, for an identified group of people, in such a way that measurement of results is possible.

This Rule promotes the provision of services as needed to complete and carry out a program for mentally retarded people, and not simply an expansion of services on the assumption that more is better.

l. Residential Facility: This definition is changed to coincide with the definition of residential facility in Minn. Stat. §245.782, Subd. 6.

Public facility and private facility are given specific meanings in the context of this Rule, and the definitions draw on Minn. Stat. §252.28 and 245.782, Subd. 6, for purposes of this Rule.

m. State Agency: To define which Department is referred to in the Rule.

n. Individual Service Plan: This is the basic document for action of the local social service agency in behalf of the mentally retarded client. It identifies the general goals upon which the service provider carries out the individual program plan.

o. Individual Program Plan: This is the basic document for action of the service provider which constitutes the agreement of the service provider can carry out the local social service agency's plan.

p. Community Social Services: Defined in accordance with Minn. Stat. §256E.03, Subd. 2.

q. Need Determination: Defined to cite the Commissioner's authority under Minn. Stat. §252.28, and to simplify usage in the Rule.

B. Standards

This section draws on several sources for its provisions. Minn. Stat. §252A.11, Subd. 5, requires the Commissioner to exercise his authority over wards in a manner which least restricts the ward's personal freedom consistent with need for supervision and protection. The significant reduction in state hospital population has been a statewide and national movement over the past several years, which responds to parental, advocate and public demands to normalize the lives of mentally retarded people. Normalization of the lives of mentally retarded people not only is considered a productive and meaningful means of reducing their dependency, but also is a basic human right.

The provision of standards for the planning and provision of services to mentally retarded people is a necessary and reasonable approach to the expenditure of public funds and decision-making in behalf of mentally retarded people.

This section, when promulgated in the current Rule, reflected a departure from previous practices. The standards of the current Rule have been accepted as the basis upon which the entire state program is administered, and are not changed. The minor word changes that are made in the text are for clarity and to prevent lengthy repetitions.

C. Case Management:

This section is amended to identify that the county board is responsible for the case management of individual mentally retarded clients, and that common usage of the term local social service agency does not change county board responsibility.

1. Diagnosis of mental retardation.

   a. No change.

   b. This section is reworded for clarification purposes, and to add that the local social service agency shall make the determination that a person may be mentally retarded. Since determination of mental retardation or that a person may be mentally retarded authorizes further services under the Rule, amendment also identifies specific statutes under which appeal may be made.

   c. Sub-sections (1), (2) and (3) are reworded to follow changes in b. above, and add physical disabilities to (3), which was inadvertently omitted from the current Rule.

   d. This section is reworded to reduce interpretation problems, but does not change the meaning.

2. Assessment

   a. No change.

   b. This section is reworded to clarify that when certain information does not exist, such facts shall be noted in the record. This section also recognizes that the identified information is important to consider, but that too much time may be taken in seeking out information that does not exist.

   c. Sub-section (1) is not changed. Sub-section (2) changes the title of daytime activity centers to developmental achievement centers in accordance with Minn. Stat. §252.261 (Supp. 1979). Further, this part eliminates reference to preschool children and adults, and children in process of diagnosis, because its reference to eligibility for such services was confused with the provision of this section. The purpose of this section is to identify when such servies are required. The qualifying phrase concerning reasonable travel distance is controversial.

   The remaining sub-sections (3), (4), (5) are not changed, and (6) is changed in accordance with the difinition section.

3. This section contains minor changes to bring it into conformance with the definitions section. Sub-section f. has been amended to clarify that the county of financial responsibility continues to be the county board, as provided in Minn. Stat. §256E.08, Subd. 7, even though the client may be placed outside the county.

D. This section is amended to identify that Minn. Stat. §256E.03, Subd. 2, delegated responsibility for community mental health programs to the county board. While the county board may make grants to a community mental health board to carry out responsibilities in this section, the county board may choose not to make a grant. In any event, the county board is responsibile to carry out the provisions in this section, which implements certain provisions of the community mental health program statutes, Minn. Stat. §245.61.60 to .68 (1979 Supp.)

1. The meaning of this section is not changed, except to identify change in responsibility as provided in Minn. Stat. §256E.03, Subd. 2.

2. Minn. Stat. 245.69, authorizes the Commissioner to establish standards for the qualification of personnel. This section is amended to identify that a professionally trained person who has experience in working with mentally retarded people is necessary to carry out the provisions of this section. Further specific qualifications are not established in recognization of the fact competent persons in mental retardation programming come from a variety of professions and types of experience in the field.

   The changes in sub-sections a, b, c, d, do not change the meaning of this section, but rather simply identifies the responsible board. Sub-section e. is no longer necessary because of county board responsibilities.

3. The meaning of this section is not changed, except to identify change in responsibility be provided in Minn. Stat. §256E.03, Subd. 2.

4. Need determination.

   This section is amended to expand on the provision in the current Rule that a letter of recommendation be submitted to the Commissioner concerning the need, location and program for facilities seeking licensure under Minn. Stat. §252.28. The current Rule does not include specific information, procedures or criteria necessary for an effective need determination process between local and state activities. This was done through Department Instructional Bulletin 78-67, which has worked well as a means of carrying out the standards in Part B. of the current Rule.

   Based on the planning responsibilities of county board, Minn. Stat. §256E.02, and the duties of community mental health boards, Minn. Stat. 245.68, to facilitate and implement programs in mental retardation, it is reasonable to continue making determination of need after a letter of recommendation is submitted to the Commissioner. Continuation of this provision in the Rule is reasonable only when the recomendation is based on uniform procedures and criteria.

a. This section proposes that the county board have information concerning the needs of the mental retardation population in the county, and certain information concerning the proposed facility or service. Based on the utilization of information gained through Instructional Bulletin 78-67, it is reasonable to expect that the information identified in (3) of this section, can be made available to the county board and the Commissioner.

b. This section requires that the letter of recommendation also include local need data and the applicant's information for consideration by the Commissioner. This section does not require submission of information on a prescribed form as was required in the Instructional Bulletin 78-67.

c. This section is based on a reasonable interpretation of the standards in Section B. of the Rule.

E. Service categories.

It is proposed that this section be eliminated from the Rule because the Commissioner and his staff are in the process of developing a single set of definitions of community social services for inclusion in a separate rule. These definitions will include all community social services provided in Minn. Stat. §256E.03, and therefore, the Section on service categories in this Rule will not be necessary.

Section E. is replaced with a new provision to protect the remaining parts of the Rule in the event that a certain part may be declared of no effect.

Expert Witnesses

The Commissioner has determined that expert witnesses are not needed because the amendments to the Rule do not constitute any basic change in the current Rule 185.

LJ/mw

Date: June 30, 1980

Arthur E. Noot
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION
OF AMENDMENTS TO RULE 185 OF THE
DEPARTMENT OF PUBLIC WELFARE GOVERNING
THE PLANNING AND PROVISION OF SERVICES
TO MENTALLY RETARDED PERSONS (12 MCAR 2.185)

STATEMENT OF
PERSONS TO TESTIFY

At the above public hearing scheduled for July 28, 1980, at Conference Room D, Veterans Service Building, 20 West 12th Street and Columbus, St. Paul, Minnesota, Ardo Wrobel from the Department of Public Welfare will testify. Warren Bock Ph.D. and Robert F. Meyer of the Department will also be available to answer questions at the public hearing.

6/30/80

Robert Hampel

STATEMENT OF COMPLIANCE WITH

RULEMAKING PROCEDURES

I, Special Assistant Attorney General Ellen Dubuque, do hereby declare that I have examined the proposed rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Ellen C Dubuque

ELLEN DUBUQUE
Special Assistant
Attorney General

Dated: November 13, 1980

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STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION
OF AMENDMENTS TO RULE 185 OF THE
DEPARTMENT OF PUBLIC WELFARE GOVERNING
THE PLANNING AND PROVISION OF SERVICES
TO MENTALLY RETARDED PERSONS (12 MCAR 2.185)

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above captioned rule(s) be held in Room D, Veterans Service Building, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota, on Monday, July 28, 1980, commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons, representatives of associations, or other interested groups, who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

Dated: June 2, 1980

Arthur E. Noot
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION
OF AMENDMENTS TO RULE 185 OF THE
DEPARTMENT OF PUBLIC WELFARE GOVERNING
THE PLANNING AND PROVISION OF SERVICES
TO MENTALLY RETARDED PERSONS (12 MCAR 2.185)

NOTICE OF HEARING

A public hearing concerning the proposed amendments to 12 MCAR 2.185 will be held at Conference Room D, Veterans Service Building, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota, on Monday, July 28, 1980, commencing at 9:00 a.m. The proposed amendments may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed amendments, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Richard Luis, Hearing Examiner, 1745 University Avenue, Room 300, St. Paul, MN 55104 612/296-8114, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed and amended rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

The provisions of the current rule establish standards for the planning and provision of services to mentally retarded people by Community Mental Health, County Welfare and Human Service Boards in Minnesota. Financial resources available to these local agencies shall be expended in accordance with Rule 185 (12 MCAR 2.185) standards, but the Rule does not require expenditure of money not available to the agencies for mental retardation (MR) services.

The rule includes a section which defines terms used in the rule, establishes standards for the provision of services that includes normalizing life experiences, placement in the least restrictive alternatives, provision of developmental opportunities. Standards also include the development of an individual service plan based on assessment of need, provision of support services in the home and community. When placement in a residential facility is needed to accomplish individual goals, placement in a state hospital is authorized when the person cannot be served at home or in a community residential facility.

The rule assigns certain responsibilities to local social service agencies (County Welfare or Human Service Boards), and community mental health agencies (Community Mental Health Boards or Human Service Boards):

1) Local social service agencies (LSSAs) are responsible for case management of all clients who are or may be mentally retarded. Case management includes diagnosis (and periodic review of diagnosis), assessment of client needs and development of individual services plans in cooperation with client and parent or guardian. Provision is made for implementing the individual service plan, periodic evaluation and payment for services. When placement is made, it must be for the purpose of carrying out the individual plan, and acceptance of a client by a service provider constitutes agreement that the goals of the plan can be carried out. When such placement is made in another county, arrangements must be made with the LSSA in that county.

Counseling is provided as needed to the client, his parents or guardian. The responsible LSSA may request assistance of the local mental health center in providing counseling and psychological and psychiatric diagnostic evaluation of mentally retarded clients.

2) Community mental health (CMH) boards are responsible for the planning and development of services to the mental retardation population in the area served by the CMH board. The mental health boards shall involve local community groups in identifying available services, and in establishing priority for the development of those services needed but not available. The CMH Board is required, under Minn. Stat. § 245.68 (1979 Supp.), to appoint an advisory committee in mental retardation, and to submit a letter of recommendation to the Commissioner prior to determination of need, location and program for programs and services to be licensed by the Commissioner.

The provisions of the proposed amendments to Rule 185 (12 MCAR 2.185) are intended to:

1) Designate the county boards of commissioners or human service boards (county boards) as the responsible local board for adherance to the Rule. Such changes in responsibility is legislatively mandated under provisions of the recently enacted Community Social Services Act (CSSA), Chapter 324, Minn. Laws 1979. The CSSA allows the county boards to make certain grants for the provision of community social services to mentally retarded persons. When grants are made by the county board, the recipient is subject to standards of the Rule.

2) Designate certain need determination responsibilities to:

a) The County Board. The County Board is required to submit need assessment data and recommendation concerning local needs of the MR population to the Commissioner.

b) The Commissioner of Public Welfare, who makes the final determination of need as provided in Minn. Stat. 252.28 (1978). The criteria for such determination includes information and recommendation from the county board, and also the standards for provision of services contained in the Rule. Other considerations concern size and costs of the proposed facility or service.

3) Consider other changes, including wording changes, to accomplish the purposes of the CSSA and to clarify the rule. Additionally, the definiton of persons who may be mentally retarded has been expanded.

4) Section E of the current Rule regarding service categories has been eliminated in favor of a single standard definition of community social services. This is intended to combine mental retardation services categories with other disability groups and Title XX Social Service definitions.

The agency's authority to adopt the proposed rule is contained in Minn. Stat. § 245.61 to .69 (1979 Supp.), 252A.01 to .21 (1978), 253A.01 to .21 (1978 and 1979 Supp.), 256E.01 to .12 (1979 Supp.), 252.28, Subd. 1 (1978), 393.07 (1978 and 1979 Supp.), and Minn. Stat. § 245.781 to .812 (1978 and 1979 Supp.). 4

The agency estimates that costs to local public bodies in the State to implement the rule will not exceed $100,000 in either of the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, Subd. 7 (1978). 10

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Ardo Wrobel, Mental Retardation Division, Department of Public Welfare, Centennial Building, St. Paul, MN 55155, telephone (612) 296-2682. Additional copies will be available at the hearing. If you have any questions on the content of the proposed amendments, contact Mr. Wrobel. 7

Notice: Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the hearing examiner's report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General. 8

Minn. Stat. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, Subd. 11 (1979 Supp.), as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or 6

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Dated: June 3, 1980

Arthur E. Noot
Commissioner of Public Welfare

IHB/ch

7

DPW Exhibit No. 7

File No.

Date 7/28/80

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF AMENDMENTS TO RULE 185 OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE PLANNING AND PROVISION OF SERVICES TO MENTALLY RETARDED PERSONS (12 MCAR 2.185)

AFFIDAVIT OF MAILING

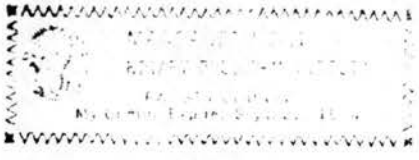
Linda M. Nelson, being first duly sworn, deposes and says:

That on the 18 day of June, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Linda M. Nelson

Subscribed and sworn to before me this 25 day of June, 1980.

Margaret Nelt



8

DPW Exhibit No. 8
File No.
Date 7/28/80

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF AMENDMENTS TO RULE 185 OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE PLANNING AND PROVISION OF SERVICES TO MENTALLY RETARDED PERSONS (12 MCAR 2.185)

AFFIDAVIT OF ADDITIONAL MAILING

Linda M. Nelson, being first duly sworn, deposes and says:

That on the 20 day of June, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, in addition to mailing the attached Notice of Hearing to all persons and associations listed on the Secretary of State's list, she also served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid to the following agencies:

All Minnesota County Welfare Departments
All Minnesota Human Service Boards
All Minnesota Area Mental Health Boards
All Minnesota State Hospitals
DAC Facilities
Rule 34 Facilities

Linda M. Nelson

Subscribed and sworn to before me

this 25 day of June,

1980.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF AMENDMENTS TO RULE 185 OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE PLANNING AND PROVISION OF SERVICES TO MENTALLY RETARDED PERSONS (12 MCAR 2.185)

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Linda M. Nelson, being duly sworn on oath deposes and says:

1) That she is an employee of the Special Services Division of the Department of Public Welfare for the State of Minnesota.

2) That on the 17th day of June, 1980, she went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the 17th day of June, 1980, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Linda M. Nelson

Subscribed and sworn to before me this 25 day of June, 1980.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

6

DRW Exhibit No. 6

File No.

Date 7/28/80

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF AMENDMENTS TO RULE 185 OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE PLANNING AND PROVISION OF SERVICES TO MENTALLY RETARDED PERSONS (12 MCAR 2.185)

CERTIFICATE OF DELIVERY OF THE SECRETARY OF STATE'S LIST

I hereby certify that the attached 347 labels 4 sheets constitute the complete list of persons, associations, and other interested groups who as of 9:35 o'clock A.M., this 17th day of June, 1980, have requested pursuant to M.S. 1976, 15.0412 Subd. 4, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

Joan Anderson Growe

BY

Donna Rutt

DPW Exhibit No. 10
File No.
Date 7/28/80

sota State Plan of Program Operations and Administration for the Special Supplemental Food Program for Women, Infants and Children (WIC) Program. Copies of the draft Plan will be available for public inspection at Minnesota Department of Health district offices and local WIC projects after May 12, 1980.

The meeting will be held Tuesday, May 27, 1980, 10:00 a.m. in the Board Room, Minnesota Department of Health, 717 SE Delaware Street, Minneapolis, Minnesota. The meeting will conclude after all registered speakers have presented testimony.

Any citizen or group may submit either written or oral testimony at the meeting. Testimony will be given on a first come, first serve basis and will be limited to fifteen (15) minutes. Advance registration is requested.

For further information, contact the Minnesota Department of Health, WIC Program, 717 SE Delaware Street, Minneapolis, Minnesota (612) 296-5233.

George R. Pettersen, M.D.
Commissioner of Health

Minnesota State Retirement System

Regular Meeting, Board of Directors

Regular quarterly meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, May 23, 1980, at 9:00 a.m. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

Pollution Control Agency Solid Waste Division

Notice of Intent to Solicit Outside Opinion Concerning A Proposed Rule Relating to Administration of a Grant Program for Solid Waste Management Planning Assistance Grants and for Waste Reduction and Source Separation Demonstration Project Grants

Notice is hereby given that the Minnesota Pollution Control Agency is considering adoption of rules that provide for administration of a program which would provide grants to political subdivisions for solid waste management planning assistance and for waste reduction and source separation demonstration projects.

The proposed rules are authorized by the Waste Management Act of 1980, Minn. Laws of 1980, ch. 564, Article 5, § 1, and Article 6, § 1. The proposed rules if adopted, would regulate the following aspects of administering the grant program:

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OFFICE OF HEARING EXAMINERS

1. Application and review procedures.
2. Criteria for eligibility.
3. Levels of local funding required.
4. Priority criteria for funding eligible projects.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Mr. Donald J. Kyser
Minnesota Pollution Control Agency
Division of Solid Waste
1935 West County Road B-2
Roseville, Minnesota 55113
Phone: (612) 297-2704

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 297-2704, and in person at the above address.

All statements of information and comment should be received by June 30, 1980. Any written material received by the Minnesota Pollution Control Agency shall become part of the hearing record.

May 5, 1980

Dale L. Wikre, Director
Division of Solid Waste

Department of Public Welfare Mental Health Bureau

Notice of Intent to Solicit Outside Opinion Concerning Revision of Rules Governing Community Mental Health Board and County Welfare or Human Service Board Responsibilities to Mentally Retarded Persons, and Standards of Operation for Residential Facilities for Mentally Retarded Persons

Notice is hereby given by the Minnesota Department of Public Welfare, Mental Health Bureau, has begun consideration of 1) specific language amendments to Rule 185 (12 MCAR § 2.185), concerning criteria and procedures for need

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determination, mandated responsibilities of the county boards to individuals who are mentally retarded, and delivery of services, and 2) amendments in Rule 34 (12 MCAR § 2.034), concerning elimination of those parts of the rule which now duplicate Department of Health rules for Supervised Living Facilities, and certain other amendments concerning standards and staffing ratios.

Rule 185, Community Mental Health Board and County Welfare or Human Service Board responsibilities to individuals who are mentally retarded, governs the planning and provision of services to all individuals who are or may be mentally retarded.

Authority for the amendments to Rule 185 is contained in Chapter 324, Minnesota Laws of 1979, enacting Minn. Stat. § 265E.03, which states that the purpose of the Community Social Service Act (CSSA) is to establish a system of planning for and providing community social services administered by the boards of county commissioners of each county under the supervision of the Commissioner of Public Welfare.

Authority for the amendments to Rule 185 is contained in recommendation of the Legislative Commission to Review Administrative Rules, April 16, 1980, to hold a public hearing on Rule 185.

The purpose of the proposed changes in Rule 185 is to 1) amend the rule to effect legislative transfer of responsibility to the county boards of commissioners, as provided in the Community Social Services Act. Current designation of responsibilities to Community Mental Health Board and County Welfare or Human Service Board is no longer appropriate under provisions of the Community Social Services Act. The purpose of other proposed changes in Rule 185 is to submit certain provisions of DPW Instructional Bulletin #78-67, for public hearing in order to amend Section D, Paragraph 4, of the Rule.

Rule 34, Standards for the Operation of Residential Facilities and Services for Persons who are mentally retarded, governs the provision of residential services to persons who are mentally retarded.

Authority for Rule 34 amendments is contained in Minn. Stat. § 252.28, and recommendation of the Legislative Commission to Review Administrative Rules, April 16, 1980, to hold a public hearing on Rule 34.

The proposed changes in Rule 34 are to 1) eliminate those parts of the rule which duplicate Department of Health Supervised Living Facility rule (such duplications occurred in the SLF Rule after adoption of Rule 34), 2) update certain parts of the rule, and 3) add staffing standards and ratios.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be made addressed to:

Ardo Wrobel, Director
Mental Retardation Division
Centennial Office Building
St. Paul, MN 55155

Oral statement of information and comment will be received during regular business hours over the telephone at 612/296-2160.

All statement of information and comment must be received by June 1, 1980. Any written material received by the Department shall become part of the hearing record.

Board of Teaching

Notice of Intent to Solicit Outside Opinion Concerning A Proposed Rule Relating to the Licensure of Teachers of English/Language Arts

Notice is hereby given that the Board of Teaching is seeking information or opinions from sources outside the board in preparing to propose the adoption of a rule governing the licensure of Teachers of English/Language Arts. Any interested persons may submit data or views on this subject in writing or orally to:

Kenneth L. Peatross, Executive Secretary
Minnesota Board of Teaching
608 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-2415

Any written materials received by the Board shall become part of the hearing record in the event that the rule governing this subject is promulgated.

April 30, 1980

Kenneth L. Peatross, Executive Secretary
Board of Teaching

Errata

At *State Register*, Volume 4, Number 42, April 21, 1980, under CONTENTS, ADOPTED RULES section: The entry "Examination and Licensing of Morticians, p. 1690" should be the only entry for Health Department, Manpower Division. The second and third entries (Urban Indian Housing Loan Program, p. 1692, and Accessibility Improvement Assistance Program, p. 1692) should have been designated as rules of the Housing Finance Agency.

State Planning Agency

The Minnesota Health Research Program

A Status Report

In January 1977 the Governor requested state financial support for research in biomedicine, dental care, the health delivery system and other health-related issues. Acting on the Gover-

standing in another state shall be eligible for licensing in Minnesota provided that he:

1. successfully completes a peace officer licensing examination pursuant to 4 MCAR § 13.006 K.; and

2. is employed within the State of Minnesota and complies with the provisions of 4 MCAR 13.020 B.; ~~and~~

~~3. successfully completes a probationary period with a single agency of not less than one year.~~

4 MCAR § 13.014 Provisional part-time officer/constable license.

A. An individual elected or appointed to the position of part-time officer or constable by a political subdivision shall be granted a provisional part-time officer/constable license.

B. Provisional license granted upon appointment:

1. Will expire six months after date of appointment unless the board receives notice of compliance with Minn. Stat. 626.8463 (a).

2. Will expire in 12 months unless the board receives notice of compliance with Minn. Stat. 626.8463 (b).

3. Will expire in 24 months unless the board receives notice of compliance with Minn. Stat. 626.8463 (c).

4. Upon receipt of notice of compliance with Minn. Stat. 626.8463 (a) to (c), the board shall issue a permanent part-time officer license to the part-time officer or shall issue a license to a constable valid for the constable's present and successive terms of office.

Department of Public Welfare
Mental Retardation Division

Proposed Amendments to Rule 12 MCAR § 2.185 which Governs the Planning and Provision of Services to Mentally Retarded People by Community Mental Health, County Welfare and Human Service Boards

Notice of Hearing

A public hearing concerning the proposed amendments to 12 MCAR § 2.185 will be held at Conference Room D, Veterans Service Building, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota, on Monday, July 28, 1980, commencing at 9:00 a.m. The proposed amendments may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed amendments, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Richard Luis, Hearing Examiner, 1745 University Avenue, Room 300, St. Paul, MN 55104 (612) 296-8114, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed and amended rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

The provisions of the current rule establish standards for the planning and provision of services to mentally retarded people by Community Mental Health, County Welfare and Human Service Boards in Minnesota. Financial resources available to these local agencies shall be expended in accordance with Rule 185 (12 MCAR § 2.185) standards, but the rule does not require expenditure of money not available to the agencies for mental retardation (MR) services.

The rule includes a section which defines terms used in the rule, establishes standards for the provision of services that includes normalizing life experiences, placement in the least restrictive alternatives, provision of developmental opportunities. Standards also include the development of an individual service plan based on assessment of need, provision of support services in the home and community. When placement in a residential facility is needed to accomplish individual goals, placement in a state hospital is authorized when the person cannot be served at home or in a community residential facility.

The rule assigns certain responsibilities to local social service agencies (County Welfare or Human Service Boards), and community mental health agencies (Community Mental Health Boards or Human Service Boards):

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike-outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

1) Local social service agencies (LSSAs) are responsible for case management of all clients who are or may be mentally retarded. Case management includes diagnosis (and periodic review of diagnosis), assessment of client needs and development of individual services plans in cooperation with client and parent or guardian. Provision is made for implementing the individual service plan, periodic evaluation and payment for services. When placement is made, it must be for the purpose of carrying out the individual plan, and acceptance of a client by a service provider constitutes agreement that the goals of the plan can be carried out. When such placement is made in another county, arrangements must be made with the LSSA in that county.

Counseling is provided as needed to the client, his parents or guardian. The responsible LSSA may request assistance of the local mental health center in providing counseling and psychological and psychiatric diagnostic evaluation of mentally retarded clients.

2) Community mental health (CMH) boards are responsible for the planning and development of services to the mental retardation population in the area served by the CMH board. The mental health boards shall involve local community groups in identifying available services, and in establishing priority for the development of those services needed but not available. The CMH board is required, under Minn. Stat. § 245.68 (1979 Supp.), to appoint an advisory committee in mental retardation, and to submit a letter of recommendation to the commissioner prior to determination of need, location and program for programs and services to be licensed by the commissioner. The provisions of the proposed amendments to Rule 185 (12 MCAR § 2.185) are intended to:

1) Designate the county boards of commissioners or human service boards (county boards) as the responsible local board for adherance to the rule. Such changes in responsibility are legislatively mandated under provisions of the recently enacted Community Social Services Act (CSSA), Chapter 324, Laws of 1979. The CSSA allows the county boards to make certain grants for the provision of community social services to mentally retarded persons. When grants are made by the county board, the recipient is subject to standards of the rule.

2) Designate certain need determination responsibilities to:

a) The County Board. The County Board is required to submit need assessment data and recommendation concerning local needs of the MR population to the commissioner.

b) The Commissioner of Public Welfare, who makes the final determination of need as provided in Minn. Stat. § 252.28 (1978). The criteria for such determination includes information and recommendation from the county board, and also the standards for provision of services contained in the rule. Other considerations concern size and costs of the proposed facility or service.

3) Consider other changes, including wording changes, to accomplish the purposes of the CSSA and to clarify the rule. Additionally, the definition of persons who may be mentally retarded has been expanded.

4) Paragraph E. of the current rule regarding service categories has been eliminated in favor of a single standard definition of community social services. This is intended to combine mental retardation services categories with other disability groups and Title XX Social Service definitions.

The agency's authority to adopt the proposed rule is contained in Minn. Stat. §§ 245.61 to 245.69 (1979 Supp.), 252A.01 to 252A.21 (1978), 253A.01 to 253A.21 (1978 and 1979 Supp.), 256E.01 to 256E.12 (1979 Supp.), 252.28, Subd. 1 (1978), 393.07 (1978 and 1979 Supp.), and Minn. Stat. §§ 245.781 to 245.812 (1978 and 1979 Supp.).

The agency estimates that costs to local public bodies in the state to implement the rule will not exceed $100,000 in either of the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, Subd. 7 (1978).

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Ardo Wrobel, Mental Retardation Division, Department of Public Welfare, Centennial Building, St. Paul, MN 55155, telephone (612) 296-2682. Additional copies will be available at the hearing. If you have any questions on the content of the proposed amendments, contact Mr. Wrobel.

Notice: Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the hearing examiner's report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, Subd. 11 (1979 Supp.), as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including *his own* traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

June 3, 1980

Arthur E. Noot
Commissioner of Public Welfare

Amendments as Proposed

~~DPW 185~~ 12 MCAR 2.185 ~~Community Mental Health Board and~~ County Board ~~Welfare~~ or Human Service Board Responsibilities to Individuals Who Are or May Be Mentally Retarded.

A. Introduction.

1. This rule is promulgated pursuant to Minn. Stat. §§ 245.61 to 245.69, 252A.01 to 252A.21, 253A.01 to 253A.21, 256E.01 to 256E.12, 252.28, 393.07, and Minn. Stat. §§ 245.781 to 245.812.

~~1.~~ 2. This rule governs the planning and provision of services to all individuals who are or may be mentally retarded. In addition, provisions of Minn. Stat. § 252A.01 to Minn. Stat. § 252A.21, Mental Retardation Protection Act, are applicable to those mentally retarded persons under guardianship or conservatorship of the commissioner. All financial resources available to agencies affected by this rule for the mentally retarded shall be expended in accordance with this rule. This rule shall not be construed as requiring expenditures of money that is not made available by the county board for mental retardation services.

3. The purpose of this rule is to establish minimum service standards for county boards and human service boards in the provision of case management and the planning, coordination and development of services for all individuals who are or may be mentally retarded.

4. Definitions

a. Case management: The provision of direct services to and with the involvement of the client, which includes diagnosis, assessment of client needs and development of an individual service plan, implementation of the individual service plan, evaluation and payment for services when the individual, or parent of a child under 18 years of age, is unable or not required to pay. When the client is a ward of the commissioner, the provisions of Minn. Stat. §§ 252A.01 to 252A.21 are also applicable.

b. Client: A child or adult who is or may be mentally retarded and in need of services as provided in this rule.

c. Commissioner: The Commissioner of Public Welfare and includes any duly authorized representative of the commissioner.

~~a.~~ d. Community mental health board: ~~Local area board or human service board which receives grant in aid from the state agency, to plan for and facilitate programs in mental retardation and assure delivery of services.~~

The local board established under Minn. Stat. § 245.66 and authorized by the county board to facilitate and implement mental retardation programs and services. If no such board is established by the county board, then the county board itself shall assume the responsibilities of a community mental health board.

e. County board: That body of duly elected officials responsible for the governance of its county under the authority of Minn. Stat. §§ 375.02 to 375.55. Where a human service board has been established under Minn. Stat. §§ 402.02-402.10, it shall be considered to be the county board, for purposes of this rule.

~~b.~~ f. Day facility: ~~Placement less than 24 hours per day outside the home which provides~~ Out-of-home setting licensed to provide training in self-care, remedial, developmental, or social skills~~.~~, on a regular basis for periods of less than 24 hours per day.

~~c.~~ g. Local social service agency: A ~~Local~~ local agency ~~under the authority of the county welfare board~~ designated and authorized by the County Board or ~~human service board which is~~, the Human Service Board, ~~responsible for social services and income maintenance.~~ to be responsible for providing social services.

~~d.~~ h. Mentally retarded person: A mentally retarded person refers to any person who has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and manifested during the developmental period.

(1) Intellectual functioning shall be assessed by one or more of the professionally recognized standardized tests developed for that purpose: significantly subaverage refers to performance which is approximately two or more standard deviations from the mean or average of the tests.

(2) Adaptive behavior shall be determined through the use of published scales, or by a combination of pertinent test data, professional observations, and the utilization of all available sources of information regarding the person's behavior which indicates the effectiveness or degree with which the individual meets the standards of personal independence and social responsibilities expected of his/her age and peer cultural group.

i. Person who may be mentally retarded:

(1) A child under 18 years of age whose behavior demonstrates significant deficits in adaptive behavior concurrently with subaverage intellectual functioning, who is in the process of diagnosis, or for various reasons, a diagnosis cannot be determined or for who a diagnosis may not be advisable because of age.

(2) An adult 18 years of age or older who has not been diagnosed as mentally retarded during the developmental period of his life, and who, for reasons of physical condition or

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trauma, has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior such as to require supervision and protection for his welfare.

j. Program: A formal continuum of care that is a culturally relevant and coordinated combination of services, with clear goals and measurable objectives. A program is directed toward meeting the needs of one specified disability group and the individuals within that group, allowing for ready movement of clients among appropriate services.

k. Service: A specific, identifiable, goal-related activity designed to carry out a program.

~~e.~~ 1. Residential facility: A setting out ~~Out~~ of ~~family~~ the client's home ~~setting providing~~ licensed to provide care, food, lodging, and provide training in self-care, remedial, developmental or social skills.

(1) Private facility: Profit and nonprofit licensed facilities for mentally retarded clients.

(2) Public facility: Licensed state hospitals (also known as institutions) for mentally retarded clients.

~~f.~~ m. State agency: Minnesota Department of Public Welfare.

~~g.~~ n. Individual service plan: An analysis by the local social service agency~~,~~ ~~for~~ of services needed by the client, including identification of the type of residential placement, if needed and the general type of program required by the client to meet the assessed needs within a specified period of time.

~~h.~~ o. Individual program plan: A detailed plan of the service provider setting forth both short-term and long-term goals with detailed methods for achieving movement toward the individual service plan of the local social service agency. ~~(Rule 34 standards and ICF/MR regulations govern this in specific detail.)~~

p. Community social services: Those services as authorized under Minn. Stat. § 256E.03, subd. 2.

q. Need determination: The determination by the commissioner of need, location and program of public and private residential and day care facilities and services for mentally retarded children and adults (§ 252.28, subd. 1).

B. ~~Standards for~~ The following standards shall be applicable in the planning and provision of services~~.~~ to individuals who are mentally retarded.

~~1. Services to individuals who are mentally retarded shall be based on the following standards:~~

~~a.~~ 1. To provide the ~~person who is mentally retarded~~ client with a normal existence. If this is not possible, to provide the ~~mentally retarded~~ person with the alternative which is least restrictive. This includes making available to ~~him/her~~ the client patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

~~b.~~ 2. To provide the ~~person who is mentally retarded~~ client with an individual service plan which is designed to acquire new and progressively difficult skills. Such plan must take into consideration the presentation of learning and developmental experience appropriate to ~~his/her~~ client adaptive behavior levels, physical condition and degenerative status.

3. The individual service plan ~~for the mentally retarded person~~ must be based on a comprehensive assessment of needs, and annual evaluations to determine appropriateness and effectiveness of the individual service plan.

~~(1)~~ a. Providing assistance and appropriate support services to enable ~~him/her~~ the client to live in ~~his/her~~ the person's home.

~~(2)~~ b. Providing a community-based private residential facility with appropriate services when the ~~mentally retarded~~ person must leave ~~his/her~~ home for a specified purpose and period of time.

~~(3)~~ c. Providing placement in a ~~state hospital~~ public residential facility when the ~~mentally retarded~~ person cannot be served at home or in the community for a specified purpose and period of time.

C. ~~Responsibilities of the local social service agency.~~ Responsibilities of the county board for case management services to mentally retarded individuals. These responsibilities may be delegated to the local social service agency pursuant to Minn. Stat. § 256E.08, subds. 2 and 4. Since it is a universal practice for the county board to delegate these responsibilities to the local social service agency, paragraph C. will refer to "local social service agency" in place of "county board".

1. Diagnosis of mental retardation.

a. The local social service agency has the primary responsibility for insuring prompt diagnosis of mental retardation, utilizing professionally qualified staff, and professional information and assistance from other sources, to secure diagnostic information.

b. The local social service agency shall determine whether the individual is ~~make determination regarding the finding of mental retardation in the individual client or a finding that the person~~ or may be mentally retarded. ~~based upon interdisciplinary procedures identified in other sections of this rule.~~ Such determination may be appealed to the commissioner ~~of Public Welfare.~~, pursuant to Minn. Stat. § 256.045 as a social service appeal.

c. The following ~~information~~ is required for diagnosis of mental retardation:

(1) ~~Diagnosis~~ Determination of intellectual functioning ~~by one~~ through ~~or more of the standardized~~ tests ~~developed for that purpose (and~~ administered by a psychologist who is qualified in the diagnosis and treatment of mental retardation~~)~~. ~~(In parenthesis, from MR Protection Act.)~~

(2) ~~Diagnosis~~ Determination of adaptive behavior on the basis of ~~a combination of pertinent test data which measure aspects of behavior, professional observation, and uti-~~

~~lization of all~~ available ~~sources of~~ information regarding the person's everyday behavior.

(3) Medical examination prepared under the direction of a licensed physician~~, and which directs attention to~~ including, but not limited to sight, hearing, seizure problems, ~~etc.~~ and physical disabilities.

(4) Report by a social worker experienced in working with mentally retarded persons on the client's social history and adjustment.

d. Diagnostic review shall be completed ~~made~~ when significant changes in behavior or functional levels occur, and at intervals not exceeding two years' duration. Exception ~~can~~ may be made ~~in the case of~~ when adults who have been in a service plan for a period of ten or more years, and the original diagnosis has been twice conformed. In such cases if there has been no significant change in behavior or functional level, diagnostic review ~~can~~ shall be ~~accomplished~~ completed at intervals not exceeding four years' duration.

2. Assessment of client needs and development of individual service plan.

a. The local social service agency shall assist any person needing help who is or may be mentally retarded by assessing that person's needs and subsequently planning to meet those needs with the cooperation and involvement of the client, parents, relatives or guardian.

b. The following information, ~~when appropriate,~~ in addition to the ~~diagnosis~~ diagnostic information, ~~is required~~ shall be considered in ~~order to determine~~ determining the individual service plan~~,~~. If any of this information does not exist, that fact shall be documented in the individual service plan:

(1) Family history.

(2) Medical, prenatal, and birth history.

(3) Early development history.

(4) School reports indicating behavior and functional levels.

(5) Psychiatric evaluation, if indicated by the other reports.

(6) Vocational evaluation reports.

(7) Observations and interviews about family and the environment.

c. The local social service agency shall, in cooperation with the client and parents and/or guardian, develop an individual service plan which shall include:

(1) The Minnesota Developmental Programming System, or other instrument of comparable validity and reliability, shall be used to provide a standardized behavioral assessment prior to development of an individual service plan.

(2) Services to be provided shall be specifically individualized to meet the client's needs. ~~Daytime activity~~ Developmental Achievement Center services, shall be provided ~~for preschool children who are mentally retarded or in the process of diagnosis, and adults,~~ when determined appropriate in the individual service plan, if such services can be obtained within reasonable travel distance.

(3) Provision for implementation of the individual service plan and arrangement for appropriate services.

(4) Provision for ensuring the delivery of service as provided in the individual service plan.

(5) Evaluation, with the assistance of qualified individuals, of the client's progress as described in the client's individual service plan.

(6) Payment for services when the ~~individual,~~ eligible client or parent of a child-client under 18 years of age, is unable or not required to pay.

3. The individual service plan shall be designed to provide services to the client in ~~his/her home~~ the client's home, and to strengthen family relationships, capabilities and responsibilities when placement in a day or residential facility is necessary. Such placement shall be made by the local social service agency in order to carry out the individual service plan.

a. When placement in a day or residential facility is necessary, the local social service agency shall be responsible for planning with the client, ~~his/her~~ the family or representative, the residential or day facility resources, and the public school, if the client is of school age.

~~(1)~~ b. Arrangements for placement in a public or private day or residential facility ~~or state hospital~~ shall be made by the local social service agency. When in the facility, the ~~person~~ client continues to be the client of the local social service agency.

~~(2)~~ c. Acceptance by the public or private facility ~~or state hospital~~ shall be based on the goals and objectives of the individual service plan of the local social service agency, as agreed upon with the client, parent, and/or guardian and as indicated by subsequent assessment and review. Acceptance shall constitute agreement that the public or private facility ~~or state hospital~~ can carry out the goals and objectives of the individual service plan within a specified period of time.

~~(3)~~ d. When a ~~mentally retarded person~~ client is accepted in a day or residential facility, the facility staff shall be responsible, within 30 days of admission, for the development of an individual program plan based on the individual service plan of the local social service agency. The local social service agency shall participate in the development of the facility's individual program plan.

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~~(4)~~ e. Placement of ~~mentally retarded persons,~~ clients or persons in the process of diagnosis, is restricted to residential facilities licensed under ~~DPW Rule 34~~ 12 MCAR § 2.034 and other applicable state agency rules or their successor. Exception can be made (1) in the case of certification of need for hospitalization or need for a skilled nursing facility for skilled nursing care on a 24 hour per day basis, or (2) when the individual service plan calls for placement in a licensed or certified foster home for four or fewer residents.

~~(5)~~ f. When the local social service agency places a client in a private residential facility located outside of that county, formal arrangements, noted in the individual service plan, must be made with the host county social service agency to carry out certain services. Primary responsibility, however, remains with the agency of ~~legal~~ financial responsibility~~.~~, as specified in Minn. Stat. § 256E.08, subd. 7.

~~(6)~~ g. Counseling shall be provided or arranged by the local social service agency to the individual, his parents or guardian as needed. The local social service agency may request assistance of the community mental health ~~director.~~ board.

~~(7)~~ h. Appeal may be made to the commissioner pursuant to Minn. Stat. § 256.045 as a social service appeal. ~~of the state agency.~~

D. Responsibilities of the county board for services to mentally retarded. ~~Community Mental Health Board or Human Service Board.~~ These responsibilities may be delegated to a community mental health board pursuant to Minn. Stat. § 256E.08, subd. 4, and § 245.61 to 245.69 and Chapter 402.

1. The ~~community mental health~~ county board ~~or human service board~~ shall ensure opportunity for the involvement of local social service agencies, local developmental disabilities councils, ~~state institutions~~ public and private residential and day care facilities and other service providers and advocacy organization in the planning and coordination of service delivery.

2. The county board shall employ a ~~Qualified Mental Retardation Professional Person~~ professionally qualified persons who has experience in treating or working with persons who are mentally retarded to coordinate service delivery to mentally retarded in the ~~area~~ county and develop a service delivery plan. ~~for the area served on a biennial basis.~~

a. The county board shall take the lead in planning and development of services not available through service providers, public and private agencies, educational and judicial agencies.

b. The county board shall identify the social services ~~categories~~ available in and outside of the ~~geographical area~~ county for its mental retardation population, including those provided by private individuals or agencies, local public agencies and public facilities. ~~state institutions.~~

c. The county board shall identify in priority of need order the social services that are not available to its mental retardation population.

d. The county board shall provide or arrange for social services ~~categories~~ needed, as specified in the ~~service delivery plan~~ County Social Services Plan, within the means provided ~~in grants-in-aid by the state agency.~~ by the county board.

~~e. Copies of the plan shall be submitted to the state agency in approved format on or before July 1 of the year preceding the biennial legislative session for the purposes of budget planning and legislative proposals. Copies of the plan shall be made available to agencies involved in related planning activities.~~

3. The county board shall provide psychological and psychiatric diagnostic evaluation, client and parental counseling and assistance in care planning for persons who are or may be mentally retarded as requested by the client or the local social service agencies in the ~~area~~ county served by the board.

~~4. The board shall submit a letter of recommendation to the Commissioner concerning the need, location and program for facilities and services applying for license under Minn. Stat. § 252.28.~~

4. Need determination responsibilities of the county board.

a. The county board shall obtain need assessment data and other available information concerning needs of the mental retardation population in the county.

(1) The county board shall provide such data and information to parties interested in developing a facility or service for mentally retarded clients.

(2) Applications for need determination for a proposed facility or service to be located in the county shall be prepared by the applicant and reviewed by the county board.

(3) Applications shall include, but are not limited to, the following:

(a) Applicant's name, address, telephone number; proposed location of the facility or service; number, sex and age range of clients to be served; description of proposed facility or service.

(b) Functional level of clients to be served; description of physical, sensory, behavioral conditions.

(c) Program plan; developmental, education, vocational services that will be available outside of the facility (if residential).

(d) Sources of clients; numbers of clients to be served from named facilities such as state hospital, general intermediate care facility, skilled nursing facility, intermediate care facility for mentally retarded, foster home, natural home.

(e) Name(s) of other counties to be served by applicant; if so, the applicant shall submit evidence to the board that those counties will make referrals.

b. The county board after consideration of the standards for provision of services (part B, this rule), shall

submit a letter of recommendation to the commissioner concerning local need, location and program for proposed facilities and services subject license under Minn. Stat. § 252.28. The letter shall include need data and other information relevant to need for the proposed facility or service, and the applicant's information concerning the proposal.

c. The commissioner shall make final determination of need, location and program.

(1) After receiving the required information, the commissioner shall consider the facts, and recommendation of the county board, and other considerations, which shall be:

(a) To protect mentally retarded persons from violations of their human and civil rights.

(b) To assure that such persons receive the full range of needed social, financial, residential and habilitative service to which they are lawfully entitled.

(c) To assure that the location of the facility will not substantially contribute to excessive concentration of community residential facilities within any town, municipality or county of the state.

(d) To assure that clients of public residential facilities who are in need of a small, home-like facility near their family will be admitted to the facility.

(e) To assure that standards for provision of services are carried out, the size of the facility must relate to the needs of the clients for services. The following criteria shall apply:

(1) Residential facilities for six shall be considered most desirable when the residents' needs can be met by live-in staff.

(2) Residential facilities for eight shall be considered most desirable when the residents' needs can be met by shift staff.

(3) Residential facilities for sixteen shall be considered most desirable when the residents have extraordinary service needs such as concomitant physical and sensory disabilities, which cannot be economically met in a facility of lesser size. The commissioner shall determine whether the severity of the physical, sensory or other disability of the residents require the 16-bed size.

(4) The ability of the residents to use community medical, psychological, therapeutic and support services.

(5) The number of residents whose physical, sensory or other disability justifies the employment of special staff by the facility.

(f) To assure that the facility and program plan cost projections are within fiscal limitations, and meet standards of effective program management. The following criteria shall apply:

(1) Facilities which are not to be for six, eight or 16 residents, must justify that they are as efficient and cost effective as the facilities for six, eight or 16 residents.

(2) Within 30 days of receipt of the applicant information and recommendation of the county board, the applicant and county board shall be notified of the commissioner's decision. If approved the licensing division of the state agency shall then act upon a license application, and the applicant may seek certification under Title XIX and other funding resources from the state agency.

(3) If a licensed facility requests an increase or decrease in licensed capacity, or change in program of any facility or service, the facility shall apply to the commissioner directly. No change shall be granted until the county board has an opportunity to comment. The commissioner shall notify the county board of such a request by sending a copy of the request to the county board. The county shall have 30 days to comment. The commissioner shall use the same criteria as is specified for original applications.

E. General

The provisions of this rule shall be severable. If any clause, sentence or provision is declared illegal or of no effect, the validity of the remainder of this rule and its applicability shall not be affected.

~~E. Service Categories.~~

~~1. The following service categories, in alphabetical order, shall constitute the range of direct and indirect services needed for a service delivery system in an identified geographical area of the State of Minnesota for its mentally retarded population. These service categories shall be identified to assure delivery as needed.~~

~~a. Activity program for adults: Activities which emphasize occupational and social goals which assist adults to become as self dependent as possible and to make constructive use of leisure time. They are comprehensive and coordinated sets of activities providing personal care and other services to adult mentally retarded persons in or out of their own homes during a portion of the 24-hour day. Services may include a variety of creative, social, physical and learning activities based upon an appropriate assessment of needs.~~

~~b. Assessment services: The systematic determination of pertinent physical, psychological, vocational, educational, cultural, social, economic, legal, environmental and other factors of the mentally retarded person and his/her family; to determine the extent to which the disability limits can be~~

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expected to limit the person's daily living and work activity; to determine how and to what extent the disabling conditions may be expected to be minimized by services; to determine the nature and scope of services to be provided; to select service objectives which are commensurate with an individual service plan of action. It is to be followed at whatever intervals are needed by periodic reassessment; services are to be provided whenever necessary in the life of the individual. Assessment services are directed toward the effects of the disability and toward maximizing life functions in the face of remaining conditions.

c. Basic developmental services: Activities emphasizing maturation and supplementing the services provided by parents or parent surrogates.

They are comprehensive and coordinated sets of developmental learning activities conducted in or outside the home during a portion of the day. These services include a variety of creative, social, physical, and learning activities selected in accordance with an appropriate assessment. The focus is upon the developmental schedule itself (individual program plan) and upon the acquisition of skills in self care. This service should continue on a sustaining basis for these who would otherwise suffer loss of functional level.

d. Case management (service management): An expert person who provides coordination of all the case activities on behalf of the clients of the local social service agency. The case manager is held responsible for mobilizing the resources needed, including especially those not provided directly by his/her own agency. It is a persuasive, rather than an administrative role. Case management is provided by a professionally qualified individual (typically not a volunteer) who has a limited but assigned number of clients.

e. Client information and referral service: Public information about services and procedures in obtaining them. This service may provide referral activity directly or may inform an inquirer. This client information and referral service may be on a face to face basis or may be available by telephone.

f. Community services: Mentally retarded people are ordinarily expected to make use of the same community services that are used by people who are not retarded. These services are not detailed because they are not specialized on behalf of the mentally retarded population.

g. Counseling: A face to face relationship with the mentally retarded individual and/or parent, siblings or other relatives in order to help the individual understand and accept his/her capabilities and limitations, and to carry through on a program of adjustment and self-improvement. This requires knowledge of human behavior and the use of special interviewing skills to achieve specified goals mutually accepted by counselor and client (or parent/guardian). Counseling is an episodic activity carried out when the need arises. Its focus is upon the solution of specific problems.

h. Diagnostic services: Coordinated services including, but not limited to, psychological services, social services, medical and other services necessary to identify the presence of a disability, its causes and its complications. Diagnosis is a current assessment of the client's condition and shall be a guiding factor in the development of the individual service plan. Diagnostic review is to be made whenever necessary in the life of the mentally retarded person, according to C.1.d. of this rule.

i. Domiciliary (residential) care: Out of home living quarters, supervision and personal care to persons needing such care and services. Domiciliary care services differ from special living arrangements by its higher degree of supervision and the greater amount of personal care needed, as compared to Special living arrangements.

j. Family support services: Those services which enable the family as a unit to meet the family-related needs of the mentally retarded persons. Family support services may include any of the other defined services. It is distinguished in that it is given to the family in their homes.

k. Follow-along: A monitoring relationship by the local social service agency on a life long basis with retarded persons and their families, if needed. It is to assure that changes in need, progression to new levels of adaptive competence, and the problems arising from crises are recognized and appropriately met.

l. Job placement services: The process of securing employment. Competitive employment is employment offered under ordinary conditions and in competition with ordinary employees. Job placement services needed by mentally retarded persons are generally those of securing and adjusting to a job, with no implication that this is limited to a single time or period in the life of the persons.

m. Professional information and referral service: An up-to-date and complete listing of all appropriate resources which can be made available and accessible to professional persons serving mentally retarded persons and their families so that they can be referred to the most appropriate and readily available resources. This kind of information and referral services is ordinarily not used by the client.

n. Protective services: Social, legal and other appropriate services which assist individuals who are unable to manage their own affairs or to protect themselves from neglect, exploitation or hazardous situations without assistance from others and to help them exercise their rights as citizens. Protective services may be an adjunct to parent responsibility, or they may be exercised in the absence of the responsible parent. Protective services should be selective in scope and should be limited to those aspects of life function in which a need is demonstrated. (See Minn. Stat. §§ 252A.01-252A.21, MR Protection Act.)

o. Recreation services: Planned and supervised leisure time activities designed to help meet specific individual needs in self expression, social interaction, athletic endeavors and entertainment; to develop skills and interests leading to enjoyable and constructive use of leisure time; and to improve his/her well being. The service may include assistance to the individual in his/her use and access of normal community recreation activities.

~~p. Service delivery system coordination: Responsibility within a given community for the provision of the full range of services. This is a planning and resource mobilizing function rather than a direct service to clients. It is concerned with the structure and the availability of services rather than with the solution of personal problems. It must be provided in connection with a multi-service area of authority. Information and referral services shall be provided in conjunction with service coordination, and the two are typically interrelated.~~

~~q. Sheltered employment: A structured service providing partial self support through the employment of the retarded worker under conditions which allow for low production rate, need for special work supervision, inability to handle a full range of job duties, or need for special job engineering and adaptive equipment.~~

~~r. Special education: A structured learning experience, based upon appropriate assessment and through the use of a broad curriculum of practical academic subjects primarily designed to develop the ability to learn and to acquire useful knowledge and basic skills in its earliest stages. In its later stages, it grades all the way through the equivalent of a secondary education and appropriately interacts with the occupational service system, such as work adjustment. Special education is legally required of the public school district acting either as direct provider or as purchaser of the service.~~

~~s. Special living arrangements: Living arrangements for persons who need some degree of supervision. Special living arrangements should provide at least counseling and leisure time activities in addition to living arrangements. The service is for disabled persons who can leave their place of residence for work, recreation or other reasons.~~

~~t. Treatment services: Interventions which halt, control or reverse those processes which cause, aggravate or complicate disability. Interventions may include treatment, such as surgical procedures, dietary controls, cosmetic therapy, chemotherapy, speech therapy or physical therapy, directed toward basic personal goals, dentistry, and medical treatments as indicated by the needs of the individual being served. Specialized medical and dental care are included.~~

~~u. Training services: Planned and systematic sequence of instruction in formal and informal activities based upon appropriate assessment and designed to develop skills in performing activities of daily living, including self help, motor skills, and communications; to enhance emotional, personal, and social development; to provide experiences conducive to the acquisition of positive self concepts and desire to learn; and to provide experiences basic for future productive activity. Emphasis is upon those skills needed to function as a member of the community. This service is not restricted to any particular age and can be offered at any appropriate time in the life of the individual who is mentally retarded.~~

~~v. Transportation services: Necessary travel and related costs in connection with transporting retarded persons to and from places in which they receive services. Transportation also includes taking services to the homebound, delivery of raw materials, and finished products from homebound industries when needed. The use of public transportation is included.~~

~~w. Vocational evaluation: Assessment of worker characteristics, through the use of unreal or simulated work tasks. The purpose is to assess occupational strengths and weaknesses, and potential for vocational development. It also includes provocational evaluation and work evaluation. This requires the use of a rehabilitation facility or similar controlled experimental setting.~~

~~x. Volunteer services: Volunteer activities by individuals, service organizations and advocacy groups, provide a variety of services on a group or one-to-one basis that supplements and augments services provided to mentally retarded persons. This may also include participation in advisory committees, advocacy activities and other forms of personal support to individuals. Such services are not to supplant staff services, and are ordinarily provided by unpaid persons and groups.~~

~~y. Work activity: It is for those whose productivity is such that they cannot meet the demands of sheltered employment. For people who need a work setting as part of their program in order to foster a sense of self worth through work while earning a below minimum wage, it legally enables a wage to be paid. Work activity, in addition, includes a variety of creative, social, physical and learning activities. Work activity may be provided only in facilities having a Federal Wage and Hour certificate for this purpose. It differs from activity programs for adults in that there is a significant productive element: it differs from sheltered employment in that it allows a wage of up to one-fourth the standard minimum.~~

~~z. Work adjustment: Learning activities typically involving real or simulated work tasks and situations. It is intended to assist a person to develop basic skills, attitudes, motivation, and work habits of the kind needed in competitive employment, sheltered employment or work activity. It develops social skills needed to function in a work environment. Its focus is upon basic employability rather than upon the skills of a specific occupation.~~

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BARTSH AND MCINTOSH
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
270 GRAIN EXCHANGE BUILDING
MINNEAPOLIS, MINNESOTA 55415

THOMAS C. BARTSH
ANDREW C. McINTOSH
SAMUEL C. TRIPP

AREA CODE 612
338-5636

OF COUNSEL:
PAUL SIMONSON
DAVID GRONBECK

November 18, 1980

Mr. Jerry Anderson
Special Assistant Attorney General
G-25 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

Re: Proposed Adoption of Amendments to Rule 185 (DPW)

Dear Mr. Anderson:

This letter is to confirm my telephone conversation of November 18, 1980 with Ms. Judith Wehrwein of your office. Our firm represents the Association of Residences for the Retarded in Minnesota (ARRM). We recently received a Notice of Submittal to Attorney General, dated November 13, 1980, regarding the above referenced Proposed Amendments to Rule 185.

In my conversation with Ms. Wehrwein on November 18, I requested an extension of time in which to file comments regarding the Proposed Amendments. Ms. Wehrwein informed me, after discussing the matter with you and Mr. Grindal, that we were granted an extension until 5:00 p.m., November 26, 1980, in which to file our comments.

Thank you for your consideration and cooperation. Please feel free to call me if you have any questions.

Very truly yours,

BARTSH AND MCINTOSH
Professional Association

Andrew C. McIntosh

ACM:bl

cc: Mr. Harold Tapper

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ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES