

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

Our File No. 764

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 12/22/81
DATE FOR REVIEW
DATE DUE 12/30/81

Adopted w/a hearing
Adopted w/o hearing
Temporary rule ✓

Approved 12/30/81 Disapproved Returned to Agency

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State Revisor approved / disapproved

---

✓ Rule as Adopted

✓ Rule as Proposed See SR

✓ Order Adopting 10.22.81 Date

N/A Notice of Intent to Solicit Outside Opinion SR 7/27/81 not submitted

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

Notice of rulemaking
Sufficiency

Affidavit of Mailing Notice or rulemaking
At least 30 days prior to hearing/adoption

✓ Mailing list Certificate

✓ Publication in State Register
9.21.81 At least 30/20 days prior to hearing/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
Approving H.E.'s Report
Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : ARTHUR E. NOOT
Commissioner of Public Welfare

DATE: 12-30-81

ATTN : John Zakelj
Mental Health Bureau, DPW

FROM : Jerry S. Anderson
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: IN THE MATTER OF THE PROPOSED ADOPTION OF STATE DEPARTMENT OF PUBLIC WELFARE TEMPORARY RULE 1 GOVERNING GRANTS FOR SERVICES TO ADULT MENTALLY ILL PERSONS IN RESIDENTIAL FACILITIES (12 MCAR 2.001 - TEMPORARY)

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. Please 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 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 to the rules in the approved set.

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

JSA:pap

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION
OF STATE DEPARTMENT OF PUBLIC WELFARE TEMPORARY
RULE 1 GOVERNING GRANTS FOR SERVICES TO ADULT
MENTALLY ILL PERSONS IN RESIDENTIAL FACILITIES
(12 MCAR 2.001 - TEMPORARY)

ORDER ADOPTING
TEMPORARY RULES

The above-entitled matter was published in the State Register on September 21, 1981, as a proposed temporary rule pursuant to Minnesota Statutes section 15.0412, subdivision 5. After affording interested and affected persons an opportunity to submit written data and views within 20 days of the publication date, reviewing and considering the data and views, and determining that the above-captioned rules are needed and reasonable,

NOW THEREFORE, IT IS ORDERED that these rules identified as DPW Temporary Rule 1 (12 MCAR 2.001 - Temporary) are adopted this 22nd day of October, 1981, pursuant to authority vested in me by Minnesota Statutes section 15.0412, Subd. 5 and Laws of 1981, Ch. 360, Art. II., Section 14.

STATE OF MINNESOTA

Arthur E. Noot

ARTHUR E. NOOT
COMMISSIONER OF PUBLIC WELFARE

BW/acd

Temporary Rule as Adopted

12 MCAR S 2.001 (Temporary) Grants for services to adult mentally ill persons in residential facilities.

A. Scope. This rule applies to county boards which apply individually or jointly to the Commissioner of Public Welfare for a grant under Laws of 1981, ch. 360, art. 2, S 14 for eligible expenditures to be incurred by the county, by any eligible residential facility with which the county board contracts, or by any public or private organization or any combination of these with which the eligible residential facility contracts.

B. Definitions.

1. "Adult" means a person age 18 and over.

2. "Commissioner" means the Commissioner of the Department of Public Welfare or a duly designated representative.

3. "County board" means the county board of commissioners or a duly designated representative.

4. "Mentally ill person" means a person who has been diagnosed by a physician, a licensed psychologist, or a licensed consulting psychologist~~, or by a clinic or center approved under 12 MCAR S 2.029~~ as having a ~~mental illness~~ condition~~. Mental illness is a condition with physiological, psychological or social components,~~ which results in an inability to interpret the environment realistically and in impaired functioning in primary aspects of daily living such as personal relations, living arrangements, work and recreation; or which is listed in the International Classification of Diseases (ICD-9-CM), code range 290, 293-302.9 or 306-314.9, or the corresponding code in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-III), Axes I, II, or III.

C. Allocation priorities.

1. In response to applications and budgets which meet the requirements of this rule, the commissioner shall allocate grants to county boards for specific eligible facilities. If the appropriation is not sufficient to fund all applications,

the commissioner shall use the following priorities in descending order ~~of priority the following priority categories, and all approved applications and budgets for facilities in a higher category shall be funded before a grant is provided for facilities in a lower category.~~:

a. Facilities operating on July 1, 1980;

b. Facilities operating at the deadline for applications under this rule, to be set by the commissioner; if there is more than one cycle of applications under this rule, this refers to the deadline for the cycle in which application is made;

c. New facilities opening after the deadline for applications under this rule and planning to provide a Category I program, as defined in 12 MCAR S 2.036;

d. New facilities opening after the deadline for applications under this rule and planning to provide a Category II program, as defined in 12 MCAR S 2.036.

2. In each priority ~~category~~, the commissioner shall give first consideration to facilities within the Rochester State Hospital catchment area counties of Dakota, Dodge, Fillmore, Freeborn, Goodhue, Houston, Mower, Olmsted, Rice, Steele, Wabasha, and Winona.

3. If two or more eligible facilities fall within the same priority ~~category~~ and if the appropriation is not sufficient to fund all facilities within that ~~category~~ priority, the commissioner shall allocate grants for those facilities which he or she deems most appropriate within the statewide continuum of care for adult mentally ill persons.

D. Eligible facilities. The commissioner shall limit grants to facilities which can show that they will submit a completed application for a license under 12 MCAR S 2.036 within three months of the effective date of the grant award, will attain at least a provisional license under 12 MCAR S 2.036 within six months of the effective date of the grant award and will maintain the license for the remainder of the grant period. Facilities may qualify these objectives for unforeseeable

circumstances beyond their control.

E. Content of applications. ~~If two or more counties apply jointly for an award, the chairpersons of all participating county boards shall sign the application.~~

Six completed copies of the application and budget must be received by the commissioner. Applications must contain at least the information specified in 1.-~~5.~~ 3., in a form separately identifiable for each facility for which a grant is requested.

1. A description of persons to be served under the grant.

2. A statement of the measureable time-limited outcomes to be accomplished with a grant under this rule. The objectives must relate to compliance with D.

3. A statement as to:

a. How the requirements of 12 MCAR S 2.036 will be complied with;

b. How the proposed services will fit into the local continuum of care; ~~and~~

c. The proposed sites and providers to be used~~.~~;

~~4. Documentation that~~ d. How alternative service and funding resources, including public school community education programs, will be used to the maximum extent possible in meeting requirements of 12 MCAR S 2.036~~.~~; and

~~5. A statement as to how~~ e. How the county board will determine the effectiveness of the services in helping adult mentally ill persons remain and function in their own communities.

F. Content of budgets; eligible expenditures.

1. A budget must accompany the application, completed on budget forms provided by the commissioner. For each facility for which a grant is requested a separate budget must be submitted showing the total projected income and expenditures for that facility. Except for depreciation, the budget must represent projected cash transactions by the county, the facility and the subcontractors. Straight-line depreciation, calculated according to generally accepted accounting

principles, may be included if the purchase of the item being depreciated is not included as an expenditure under this rule.

2. Each budget must separate expenditures according to the following categories, as further defined in 3.-6.:

a. Room and board costs;

b. Program costs separated into previously funded program costs and new program costs, with new program costs further separated into new direct service costs and other new program costs; and

c. Other costs including program costs for residents who are not adult or not mentally ill.

3. "Room and board costs" shall include a reasonable allocation of salaries and other costs related to the costs in a.-d.; however, any of ~~the~~ these costs which are new since June 1, 1981, and are required by 12 MCAR S 2.036 shall be considered as other new program costs and not as room and board costs.

a. All directly identifiable costs of normal and special diet food preparation and service;

b. All directly identifiable costs of linen, bedding, laundering and laundry supplies;

c. All directly identifiable costs of housekeeping, including cleaning and lavatory supplies; and

d. All directly identifiable costs for maintenance and operation of the building and grounds, including fuel, electricity, water, supplies and parts and tools to repair and maintain equipment and facilities.

4. "Previously funded program costs" shall include costs for any services provided before June 1, 1981, at least at the level of funding used for those services during May, 1981.

5. Within the limits in I.1., "new direct service costs" are the only costs which may be paid with state funds under this rule. New direct service costs may include the following if the costs are required by 12 MCAR S 2.036 and if the costs are new since June 1, 1981:

a. Salaries and related expenses (including payroll taxes, health insurance, telephone, personal liability

insurance, postage, recruitment and in-state travel) of personnel providing services directly to adult mentally ill residents including support personnel to the extent they perform client related duties such as client recordkeeping, individual program planning and on-site program supervision;

b. Consumable supplies used by the personnel described in a. in performing client related duties and by clients in carrying out program activities; and

c. Other expenditures which are shown by the county board to be relatively minor, essential for the facility to meet requirements of 12 MCAR S 2.036 and which cannot be paid for from local funds.

6. "Other new program costs" shall include all new program costs other than those already included in new direct service costs. This shall include, but not be limited to, renovation, construction or rent of buildings, purchase or lease of vehicles or equipment, if these costs are new since June 1, 1981, and are required by 12 MCAR S 2.036.

7. The application shall include an explanation of the allocation of indirect costs to the various budget categories.

8. If there has been a state or federal decision to reduce the previous level of funding for an existing program, expenditures which would otherwise be included under previously funded program costs may be included under new direct service costs or other new program costs. The type of expenditure would determine which of the new cost categories would be appropriate. An application must include documentation of the elimination or reduction in funds by the state or federal government. If the previous funding was from a block grant type of funding source, the percentage reduction used for this exception must not exceed the average percentage reduction for all other services funded by the applicant county board from that funding source.

9. The dollar amounts for the various items included in the budget must not exceed:

a. The prevailing cost of like items in the local

county; and

b. The costs that prudent and cost-conscious management would pay for a given item or service.

10. The budget shall relate to a time period beginning on a date set by the county board, but not before the effective date of this rule, and ending June 30, 1983.

11. The budget shall include the projected number of client-days of service per facility and the projected cost per client-day.

G. Approval of applications and budgets. The commissioner shall base his approval of applications and budgets on the applications' and budgets' compliance with this rule and on the availability of funds within the allocation priorities in C.

H. Lines of accountability and flow of funds.

1. The county board shall be the primary local entity responsible to the commissioner for use of all funds paid to it under this rule. Subject to the other requirements of this rule, the commissioner shall pay funds under this rule solely to the county board receiving the award. Payments shall be in the form of an initial advance, with subsequent quarterly payments contingent upon receipt of a completed quarterly financial report from the county board on forms provided by the commissioner.

2. If a county board elects to apply for a grant under this rule, it shall, before submission of the application and budget to the commissioner:

a. Determine which facilities shall be included in the application and budget; and

b. Review and approve the completed application and budget.

3. Payment from the county board to the residential facility must be based on a contract between the county board and the facility. If this contract and the requirements of this rule are complied with, the county board shall, except as provided in 6.b., pay to the facility all funds received by the county board for that facility. The county board shall

determine the method of payment to the facility.

4. The contract between the county board and the facility shall specify:

a. How the county board will monitor the facility's compliance with this rule; and

b. How the county board and the facility will monitor subcontractors' compliance with this rule.

5. If two or more county boards apply jointly for a grant, they shall designate a host county board which will carry out the responsibilities in 1. and 3.-4. The assignment of these responsibilities must be agreed to in a contract between the host county board and the other counties.

6. If funds under this rule are to be used by a service provider other than the contracting facility in 3., then:

a. The amount and planned use of those funds must be identified in the application and budget for the facility whose residents will receive the service;

b. Payments to the service provider must be based on a subcontract between the facility and the service provider. This subcontract shall include an agreement by the service provider to comply with this rule. If the county board and the facility agree, payments may be made directly from the county board to the service provider.

I. State and local shares.

1. The commissioner shall, after approval of an application and budget, award a grant equal to the lesser of:

a. Seventy five percent of the new program costs as defined in F.2.b.; or

b. The new direct service costs, as defined in F.5.

2. A county board which applies for a grant for more than one facility may request varying percentages of state and local funds for each facility. The commissioner shall approve the request if the total request for all facilities for that county complies with 1. and if state funds are used only for new direct service costs.

3. The commissioner's award shall specify the amounts

awarded for each facility.

4. The 25 percent local share must consist of funds committed specifically for the objectives proposed in the application. Fee income may be counted as part of the local share.

5. If the county board, the facility or the subcontractor receive any income other than county funds as a reimbursement for costs also funded through state or local matching funds under this rule, then:

a. Except as provided in c., the commissioner shall consider this income to be applied first to the local share;

b. If the income exceeds the local share of the approved new program costs, the commissioner shall reduce the state grant by whatever amount the income exceeds the local share; and

c. If the income is from state grants under 12 MCAR S 2.014 or 12 MCAR S 2.022 the commissioner shall reduce the state grant under this rule. The amount of the reduction shall equal the amount by which those other state grants are paying for costs which are also funded by state or local matching funds under this rule.

J. Reporting and maintenance of records.

1. The county board, its contracting facilities and subcontractors shall maintain records to document compliance with this rule and with the objectives in the approved application.

2. The county board shall use forms provided by the commissioner to report the use of funds under this rule, including the number and kinds of persons served, the cost of providing each service, results achieved and other data deemed necessary by the commissioner. Wherever possible the commissioner shall use the same data which is required for reporting under 12 MCAR S 2.036 and under the Community Social Services Act, Minn. Stat. ch. 256E. The commissioner shall use these reports and the evaluation from the county board to develop the report to the Legislature required by Laws of 1981,

ch. 360, art. 2, S 14, subd. 4.

3. The county board, its contracting facilities and subcontractors, shall maintain financial records, using generally accepted accounting principles, in a way so that expenditures can be easily compared with the approved budget, that all sources of income can be readily identified and that documentation is available for all expenditures.

K. Budget revision procedures.

1. After a grant award is made and as long as state funds are used for eligible expenditures under this rule, budget revisions, including transfers between approved facilities within a county, totaling up to ten percent of a facility's approved new program costs may be made with county board approval only. Revisions totaling in excess of that amount require both county board and commissioner's approval.

2. The county board may delegate its approval of budget revisions if the delegation is specified in the county board minutes.

3. All requests for budget revision approval must include the reason for the revision and a statement as to how the revision will affect program objectives. The commissioner shall not grant approval for budget revisions unless the revisions are consistent with the provisions of this rule.

L. Withdrawal of a grant.

1. If the commissioner determines that funds are not needed to implement the approved application, and if the county board agrees the funds are not needed, all or part of the grant may be withdrawn immediately.

2. If the commissioner determines that funds are not being used according to the approved application and budget, all or part of the grant may be withdrawn upon 30 days notice to the affected county board and to the affected facility. Opportunity for hearing pursuant to the Administrative Procedures Act, Minn. Stat. ch. 15, shall be provided before funds are withdrawn.

3. The commissioner may use the funds withdrawn under 1. or 2. to make new awards for other applications and budgets

approved under this rule.

M. Other applicable laws and rules.

1. To the extent that the county board, its contracting facilities and subcontractors are also subject to other laws and rules, they shall also meet the standards of those laws and rules to be eligible for a grant under this rule.

2. If the commissioner determines that this rule cannot be met immediately, he or she may approve the application if the county board provides a definite, reasonable plan to meet all applicable laws and rules within three months of the date otherwise required by this rule.

APPROVED AS TO LEGALITY

12/30 1981

WARREN SPANNAUS, ATTORNEY GENERAL

BY J S Anderson

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 30 1981
Joan Anderson Growe
Secretary of State

3:00 PM

AG copy

Temporary Rule as ~~Proposed~~ Adopted (all new material)

12 MCAR S 2.001 (Temporary) Grants for services to adult mentally ill persons in residential facilities.

A. Scope. This rule applies to county boards which apply individually or jointly to the Commissioner of Public Welfare for a grant under Laws of 1981, ch. 360, S 14 for eligible expenditures to be incurred by the county, by any eligible residential facility with which the county board contracts, or by any public or private organization or any combination of these with which the eligible residential facility contracts.

B. Definitions.

1. "Adult" means a person age 18 and over.

2. "Commissioner" means the Commissioner of the Department of Public Welfare or a duly designated representative.

3. "County board" means the county board of commissioners or a duly designated representative.

4. "Mentally ill person" means a person who has been diagnosed by a physician, a licensed psychologist, or a licensed consulting psychologist~~,~~ ~~or by a clinic or center approved under 12 MCAR S 2.029~~ as having a ~~mental illness~~ condition~~.~~ ~~Mental illness is a condition with physiological, psychological or social components,~~ which results in an inability to interpret the environment realistically and in impaired functioning in primary aspects of daily living such

FofF p.1

as personal relations, living arrangements, work and recreation. (See Attachment)

C. Allocation priorities.

1. In response to applications and budgets which meet the requirements of this rule, the commissioner shall allocate grants to county boards for specific eligible facilities. If the appropriation is not sufficient to fund all applications, the commissioner shall use the following priorities in descending order: ~~of priority the following priority categories; and all approved applications and budgets for facilities in a higher category shall be funded before a grant is provided for facilities in a lower category.~~ F of F p.2

a. Facilities operating on July 1, 1980;

b. Facilities operating at the deadline for applications under this rule, to be set by the commissioner; if there is more than one cycle of applications under this rule, this refers to the deadline for the cycle in which application is made;

c. New facilities opening after the deadline for applications under this rule and planning to provide a Category I program, as defined in 12 MCAR S 2.036;

d. New facilities opening after the deadline for applications under this rule and planning to provide a Category II program, as defined in 12 MCAR S 2.036.

2. In each priority ~~category~~, the commissioner shall give first consideration to facilities within the Rochester State Hospital catchment area counties of Dakota, Dodge, Fillmore, Freeborn, Goodhue, Houston, Mower, Olmsted, Rice, Steele, Wabasha, and Winona.

3. If two or more eligible facilities fall within the same priority ~~category~~ and if the appropriation is not sufficient to fund all facilities within that ~~category~~ priority, the commissioner shall allocate grants for those facilities which he or she deems most appropriate within the statewide continuum of care for adult mentally ill persons.

D. Eligible facilities. The commissioner shall limit grants to facilities which can show that they will submit a completed application for a license under 12 MCAR S 2.036 within three

Attachment (Insert after 1 and before 2)

; or which is listed in the International classification of Diseases (ICD-9-CM), code range 290, 293-302.9 or 306-314.9, or the corresponding code in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-III), Axes I, II, or III.

months of the effective date of the grant award, will attain at least a provisional license under 12 MCAR S 2.036 within six months of the effective date of the grant award and will maintain the license for the remainder of the grant period. Facilities may qualify these objectives for unforeseeable circumstances beyond their control.

E. Content of applications. ~~If two or more counties apply jointly for an award, the chairpersons of all participating county boards shall sign the application.~~ Fol Fp. 3

Six completed copies of the application and budget must be received by the commissioner. Applications must contain at least the information specified in 1.-5., in a form separately identifiable for each facility for which a grant is requested.

1. A description of persons to be served under the grant.

2. A statement of the measureable time-limited outcomes to be accomplished with a grant under this rule. The objectives must relate to compliance with D.

3. A statement as to:

a. How the requirements of 12 MCAR S 2.036 will be complied with;

b. How the proposed services will fit into the local continuum of care; ~~and~~

c. The proposed sites and providers to be used~~.~~;

d. How ~~4. Documentation that~~ alternative service and funding resources, including public school community education programs, will be used to the maximum extent possible in meeting requirements of 12 MCAR S 2.036~~.~~; and

e. How ~~5. A statement as to how~~ the county board will determine the effectiveness of the services in helping adult mentally ill persons remain and function in their own communities.

F. Content of budgets; eligible expenditures.

1. A budget must accompany the application, completed on budget forms provided by the commissioner. For each facility for which a grant is requested a separate budget must be submitted showing the total projected income and expenditures for that facility. Except for depreciation, the budget must

represent projected cash transactions by the county, the facility and the subcontractors. Straight-line depreciation, calculated according to generally accepted accounting principles, may be included if the purchase of the item being depreciated is not included as an expenditure under this rule.

2. Each budget must separate expenditures according to the following categories, as further defined in 3.-6.:

a. Room and board costs;

b. Program costs separated into previously funded program costs and new program costs, with new program costs further separated into new direct service costs and other new program costs; and

c. Other costs including program costs for residents who are not adult or not mentally ill.

3. "Room and board costs" shall include a reasonable allocation of salaries and other costs related to the costs in a.-d.; however, any of ~~the~~ these costs which are new since June 1, 1981, and are required by 12 MCAR S 2.036 shall be considered as other new program costs and not as room and board costs. FofF p.4

a. All directly identifiable costs of normal and special diet food preparation and service;

b. All directly identifiable costs of linen, bedding, laundering and laundry supplies;

c. All directly identifiable costs of housekeeping, including cleaning and lavatory supplies; and

d. All directly identifiable costs for maintenance and operation of the building and grounds, including fuel, electricity, water, supplies and parts and tools to repair and maintain equipment and facilities.

4. "Previously funded program costs" shall include costs for any services provided before June 1, 1981, at least at the level of funding used for those services during May, 1981.

5. Within the limits in I.1., "new direct service costs" are the only costs which may be paid with state funds under this rule. New direct service costs may include the following if the costs are required by 12 MCAR S 2.036 and if the costs are new

since June 1, 1981:

a. Salaries and related expenses (including payroll taxes, health insurance, telephone, personal liability insurance, postage, recruitment and in-state travel) of personnel providing services directly to adult mentally ill residents including support personnel to the extent they perform client related duties such as client recordkeeping, individual program planning and on-site program supervision;

b. Consumable supplies used by the personnel described in a. in performing client related duties and by clients in carrying out program activities; and

c. Other expenditures which are shown by the county board to be relatively minor, essential for the facility to meet requirements of 12 MCAR S 2.036 and which cannot be paid for from local funds.

6. "Other new program costs" shall include all new program costs other than those already included in new direct service costs. This shall include, but not be limited to, renovation, construction or rent of buildings, purchase or lease of vehicles or equipment, if these costs are new since June 1, 1981, and are required by 12 MCAR S 2.036.

7. The application shall include an explanation of the allocation of indirect costs to the various budget categories.

8. If there has been a state or federal decision to reduce the previous level of funding for an existing program, expenditures which would otherwise be included under previously funded program costs may be included under new direct service costs or other new program costs. The type of expenditure would determine which of the new cost categories would be appropriate. An application must include documentation of the elimination or reduction in funds by the state or federal government. If the previous funding was from a block grant type of funding source, the percentage reduction used for this exception must not exceed the average percentage reduction for all other services funded by the applicant county board from that funding source.

9. The dollar amounts for the various items included in the budget must not exceed:

a. The prevailing cost of like items in the local county; and

b. The costs that prudent and cost-conscious management would pay for a given item or service.

10. The budget shall relate to a time period beginning on a date set by the county board, but not before the effective date of this rule, and ending June 30, 1983.

11. The budget shall include the projected number of client-days of service per facility and the projected cost per client-day.

G. Approval of applications and budgets. The commissioner shall base his approval of applications and budgets on the applications' and budgets' compliance with this rule and on the availability of funds within the allocation priorities in C.

H. Lines of accountability and flow of funds.

1. The county board shall be the primary local entity responsible to the commissioner for use of all funds paid to it under this rule. Subject to the other requirements of this rule, the commissioner shall pay funds under this rule solely to the county board receiving the award. Payments shall be in the form of an initial advance, with subsequent quarterly payments contingent upon receipt of a completed quarterly financial report from the county board on forms provided by the commissioner.

2. If a county board elects to apply for a grant under this rule, it shall, before submission of the application and budget to the commissioner:

a. Determine which facilities shall be included in the application and budget; and

b. Review and approve the completed application and budget.

3. Payment from the county board to the residential facility must be based on a contract between the county board and the facility. If this contract and the requirements of this

rule are complied with, the county board shall, except as provided in 6.b., pay to the facility all funds received by the county board for that facility. The county board shall determine the method of payment to the facility.

4. The contract between the county board and the facility shall specify:

a. How the county board will monitor the facility's compliance with this rule; and

b. How the county board and the facility will monitor subcontractors' compliance with this rule.

5. If two or more county boards apply jointly for a grant, they shall designate a host county board which will carry out the responsibilities in 1. and 3.-4. The assignment of these responsibilities must be agreed to in a contract between the host county board and the other counties.

6. If funds under this rule are to be used by a service provider other than the contracting facility in 3., then:

a. The amount and planned use of those funds must be identified in the application and budget for the facility whose residents will receive the service;

b. Payments to the service provider must be based on a subcontract between the facility and the service provider. This subcontract shall include an agreement by the service provider to comply with this rule. If the county board and the facility agree, payments may be made directly from the county board to the service provider.

I. State and local shares.

1. The commissioner shall, after approval of an application and budget, award a grant equal to the lesser of:

a. Seventy five percent of the new program costs as defined in F.2.b.; or

b. The new direct service costs, as defined in F.5.

2. A county board which applies for a grant for more than one facility may request varying percentages of state and local funds for each facility. The commissioner shall approve the request if the total request for all facilities for that county

complies with 1. and if state funds are used only for new direct service costs.

3. The commissioner's award shall specify the amounts awarded for each facility.

4. The 25 percent local share must consist of funds committed specifically for the objectives proposed in the application. Fee income may be counted as part of the local share.

5. If the county board, the facility or the subcontractor receive any income other than county funds as a reimbursement for costs also funded through state or local matching funds under this rule, then:

a. Except as provided in c., the commissioner shall consider this income to be applied first to the local share;

b. If the income exceeds the local share of the approved new program costs, the commissioner shall reduce the state grant by whatever amount the income exceeds the local share; and

c. If the income is from state grants under 12 MCAR S 2.014 or 12 MCAR S 2.022 the commissioner shall reduce the state grant under this rule. The amount of the reduction shall equal the amount by which those other state grants are paying for costs which are also funded by state or local matching funds under this rule.

J. Reporting and maintenance of records.

1. The county board, its contracting facilities and subcontractors shall maintain records to document compliance with this rule and with the objectives in the approved application.

2. The county board shall use forms provided by the commissioner to report the use of funds under this rule, including the number and kinds of persons served, the cost of providing each service, results achieved and other data deemed necessary by the commissioner. Wherever possible the commissioner shall use the same data which is required for reporting under 12 MCAR S 2.036 and under the Community Social

Services Act, Minn. Stat. ch. 256E. The commissioner shall use these reports and the evaluation from the county board to develop the report to the Legislature required by Laws of 1981, ch. 360, S 14, subd. 4.

3. The county board, its contracting facilities and subcontractors, shall maintain financial records, using generally accepted accounting principles, in a way so that expenditures can be easily compared with the approved budget, that all sources of income can be readily identified and that documentation is available for all expenditures.

K. Budget revision procedures.

1. After a grant award is made and as long as state funds are used for eligible expenditures under this rule, budget revisions, including transfers between approved facilities within a county, totaling up to ten percent of a facility's approved new program costs may be made with county board approval only. Revisions totaling in excess of that amount require both county board and commissioner's approval.

2. The county board may delegate its approval of budget revisions if the delegation is specified in the county board minutes.

3. All requests for budget revision approval must include the reason for the revision and a statement as to how the revision will affect program objectives. The commissioner shall not grant approval for budget revisions unless the revisions are consistent with the provisions of this rule.

L. Withdrawal of a grant.

1. If the commissioner determines that funds are not needed to implement the approved application, and if the county board agrees the funds are not needed, all or part of the grant may be withdrawn immediately.

2. If the commissioner determines that funds are not being used according to the approved application and budget, all or part of the grant may be withdrawn upon 30 days notice to the affected county board and to the affected facility. Opportunity for hearing pursuant to the Administrative Procedures Act, Minn.

Stat. ch. 15, shall be provided before funds are withdrawn.

3. The commissioner may use the funds withdrawn under 1. or 2. to make new awards for other applications and budgets approved under this rule.

M. Other applicable laws and rules.

1. To the extent that the county board, its contracting facilities and subcontractors are also subject to other laws and rules, they shall also meet the standards of those laws and rules to be eligible for a grant under this rule.

2. If the commissioner determines that this rule cannot be met immediately, he or she may approve the application if the county board provides a definite, reasonable plan to meet all applicable laws and rules within three months of the date otherwise required by this rule.

September 4, 1981

OFFICE OF THE REVISOR OF STATUTES
PROPOSED RULES

Agency Department of Public Welfare

Division Bureau of Mental Health

Agency Contact John Zakelj Phone Number 296-4425

Title: Proposed Temporary Rules Governing Grants for Services to Adult Mentally Ill Persons in Residential Facilities

Type of Rules: Permanent_____ Temporary X

Incorporations by References:

Rule Number Material Incorporated
Author
Title
Place
Publisher
Date
Cost
Places Available

None

See Additional references on back Yes____ No____

Duplication of Statutory Language.

Rule Number Statutory Section Duplicated

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Name: John C. Fuller

Title: Assistant Revisor

Phone: 296-0955

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Temporary Rules of the Department of Public Welfare Governing Grants for Services to Mentally Ill Persons in Residential Facilities

ORDER FOR PUBLICATION OF TEMPORARY RULES

IT IS ORDERED this 1st day of September, 1981, that the proposed temporary rules in the above-entitled matter be published in the State Register.

STATE OF MINNESOTA

Commissioner of Public Welfare

JM/ckqq

TITLE 7 HEALTH

Part 1 Health Department

7 MCAR §§ 1.145-1.147, 1.149 (proposed) 434

Part 6 Nursing Home Administrators Board

7 MCAR §§ 6.010, 6.013 (adopted) 21

NH 22-23 (proposed repeal withdrawn) 21

TITLE 8 LABOR

Part 1 Labor and Industry Department

8 MCAR § 1.7001 (MOSHC1) (proposed) 218

8 MCAR §§ 1.7230-1.7232, 1.7240-1.7247, 1.7292, 1.7295, 1.7297, 1.7304 (proposed) 446

RS 1 (proposed) 450

Part 4 Economic Security Department

8 MCAR § 4.0012 (proposed) 5

TITLE 9 LAW

Administrative Hearings Office

9 MCAR §§ 2.301-2.305, 2.307-2.325 (adopted) 396

9 MCAR § 2.306 (withdrawn) 396

TITLE 12 SOCIAL SERVICE

Part 2 Public Welfare Department

12 MCAR § 2.001 (Temporary) (proposed) 480

12 MCAR § 2.027 (proposed) 235

12 MCAR § 2.036 (proposed repeal) 249

12 MCAR § 2.036 (proposed) 249

12 MCAR § 2.064 (adopted) 484

12 MCAR § 2.079 (proposed) 13

12 MCAR § 2.221 (proposed) 452

Part 3 Housing Finance Agency

12 MCAR §§ 3.002, 3.133 (proposed temporary) 69

12 MCAR §§ 3.002, 3.133 (proposed temporary, notice of correction) 159

12 MCAR § 3.002 (proposed) 213

12 MCAR § 3.133 (proposed) 214

12 MCAR §§ 3.053, 3.054 (proposed) 216

TITLE 14 TRANSPORTATION

Part 1 Transportation Department

14 MCAR § 1.5050 (withdrawn) 38

PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Public Welfare
Mental Health Bureau

Proposed Temporary Rule Relating to Grants for Services to Adult Mentally Ill Persons in Residential Facilities

Request for Public Comment

The State Department of Public Welfare proposes to adopt the above entitled temporary rule, as directed by Laws of 1981, ch. 360, § 14.

KEY: 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." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Persons interested in this rule have until October 12, 1981 to submit comments. The proposed temporary rule may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Comments should be sent to:

John Zakelj
Mental Health Bureau, DPW
Centennial Office Building
St. Paul, MN 55155
612/296-4426

Upon adoption of the temporary rule, the proposed rule, this notice, all written comments received, and the adopted temporary rule will be delivered to the Attorney General and to the Revisor of Statutes for review as to form and legality, including the issue of substantial change. The adopted temporary rule will not become effective without the Attorney General's approval and the Revisor of Statute's certification of the rule's form. Persons who wish to be advised of the submission of this material, or who wish to receive a copy of the adopted temporary rule, should submit a written request to John Zakelj.

As required by the Administrative Procedures Act, this temporary rule will be effective for not more than 180 days. The department will initiate the process for a permanent rule as soon as possible.

The proposed temporary rule will govern grant applications, approval of applications, allocation of grants, and maintenance of service and financial records. The grants will be made to county boards to help residential facilities meet licensing standards. This new grant program was authorized by the 1981 Legislature because most residential facilities for adult mentally ill persons do not have sufficient funding to provide services which are required under the licensing rule, 12 MCAR § 2.036.

Proposed 12 MCAR § 2.001 (Temporary) is the same rule which had been referred to as proposed temporary rule 12 MCAR § 2.012 in the Notice of Intent to Solicit Outside Opinion, published in the *State Register*, 6 S.R. 119, dated July 27, 1981. The number 12 MCAR § 2.012, or DPW Rule 12, will be the number used for this rule when it is proposed for promulgation as a permanent rule early next year.

The estimated cost to the state for the implementation of this rule and a similar permanent rule for the fiscal year ending June 30, 1981 is $1,062,624, and, for the fiscal year ending June 30, 1982, $3,821,000. These are the amounts appropriated for this purpose by Laws of 1981, ch. 360, § 2, subd. 5.

Since Laws of 1981, ch. 360, § 14 requires a local match of 25%, the estimated cost to the counties for the fiscal year ending June 30, 1982 is $354,208; and, for the fiscal year ending June 30, 1983, $1,273,667. This is a permissive statute; therefore, the obligations in this rule apply only if a county elects to apply for a grant under this rule.

Copies of this notice and the proposed temporary rule may be obtained by contacting John Zakelj (612/296-4426).

Arthur E. Noot
Commissioner of Public Welfare

FISCAL STATEMENT — Temporary Rule 1

Methodology used to arrive at dollar projections

The purpose of grants under Temporary Rule 1 will be to fund the costs required to meet licensing under Rule 36.

There are currently 301 beds in community residential facilities which would come under Rule 36 Category I (intensive treatment/rehabilitation services) and 1,996 beds which would come under Rule 36 Category II (semi-independent living). It is estimated that projected reduction in hospitalization and provision of residential services to mentally ill persons who are now in the community but not receiving the residential care they need will require 1,100 Category I beds and 3,800 Category II beds by 1985.

Since the department has decided not to require licensure of facilities in the nursing care category under Rule 36, this budget does not include approximately 14,500 mentally ill persons residing in nursing care facilities; it also excludes certain other categories of MI residential care, e.g. psychiatric hospitals, which would not come under Rule 36.

MI residential care in State Hospitals will be covered by Rule 36, but not by temporary Rule 1 because the state hospital budget is included elsewhere in the department's budget.

Category I

Projected program need over four years is 1,100 beds. There presently exists 301 beds. For the purpose of this cost projection, upgrading the existing 301 beds will cost the same as establishing new beds.

Since the following figures are based on phasing in these beds over a 4 year period, bed days will be calculated by halving the total bed days being funded for the initial phase-in year.

1,100 beds are needed over 4 years, 1,100 ÷ 4 or 275 are the number of beds to be phased in each year. In the first year of the biennium, the per diem rate applied is $8.21. In the second year of the biennium, the per diem rate applied is $9.44. Below are the calculations:

1st Year
275 beds × 365 days = 100,375 bed days
100,375 × ½ (phase-in calculation) = 50,188 bed days
50,188 × $8.21 (per diem) = $412,039
$412,039 + 20% fringe of $82,408 = $494,447 (Total 1st Year Costs)

2nd Year
275 beds × 365 days = 100,375 bed days (carried over from 1st year)
100,375 × 1 (phase-in complete by beginning of 2nd year) = 100,375 bed days
100,375 × 9.44 (2nd year per diem) = $947,540
947,540 + 20% fringe = $1,137,046
275 beds × 365 days = 100,375 bed days
100,375 × ½ (phase-in of 2nd 275 beds calculation) = 50,188 bed days
50,188 × 9.44 (2nd year per diem) = $473,770
$473,770 + 20% fringe of $94,754 = $568,524
Total 2nd Year Costs = 1,137,048 + 568,524 = $1,705,572

Category II

Projected program need over four years is 3,800 beds. There presently exist 2,000 beds. Since 3,800 beds are needed over 4 years, 3,800 ÷ 4 (or 950) are the number of beds to be phased in each year. In the first year of the biennium, the per diem rate applied is 4.72. In the second year the per diem rate applied is 5.43. Below are the calculations:

1st Year
950 beds × 365 days = 346,750 bed days
346,750 × ½ (phase-in calculation) = 173,375 bed days
173,375 × 4.72 = $818,330
$818,330 + 20% fringe = $981,996 (Total 1st Year Costs)

2nd Year
950 beds × 365 days = 346,750 days (carried over from 1st year)
346,750 × 1 (Phase-in of 1st 950 beds complete by beginning of 2nd yr) = 346,750 bed days
346,750 × 5.43 (2nd year per diem) = $1,882,853
1,882,853 + 20% fringe = $2,259,424
950 beds × 365 days = 346,750 bed days
346,750 × ½ (phase-in of 2nd 950 beds calculation) = 173,375 bed days
173,375 × 5.43 (2nd year per diem) = $941,426
941,426 + 20% fringe = $1,129,711
Total 2nd Year Costs = 2,259,424 + 1,129,711 = $3,389,135

Summary

	First Year*		Second Year
Category I	494,447		1,705,572
Category II	981,996		3,389,135
Total Year Cost	1,476,443		5,094,707
Total Biennium Cost		$6,571,150	

	First Year		Second Year
Local Share (25%)	369,111		1,273,677
State Share (75%)	1,107,332		3,821,030
Total State $ for 1981-83 biennium		$4,928,362	

KEY: 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." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Summary of Rule 36 Funding Projections Over Five Years
(Figures do not include an inflation factor after year 2)

	Category I	Category II	Total	State Share (75%)	Local Share (25%)
1st year	494,447	981,996	1,476,443	1,107,332	369,110
2nd year*	1,705,572	3,389,135	5,094,707	3,821,030	1,273,676
3rd year	2,842,620	5,648,559	8,491,179	6,386,385	2,122,794
4th year	3,979,668	7,907,983	11,887,651	8,915,738	2,971,912
5th year	4,548,192	9,037,694	13,585,886	10,189,414	3,396,471

*As of 9/1/81 the first year estimates are reduced to $1,416,832 for total cost, $354,208 for local share and $1,062,624 for state share. This is due to a reduction in the final appropriation and to a 2 week delay in the projected implementation date.

**All per diem rates are projected averages. Actual payments will vary depending on individual situations.

Temporary Rule as Proposed (all new material)

12 MCAR § 2.001 (Temporary) Grants for services to adult mentally ill persons in residential facilities.

A. Scope. This rule applies to county boards which apply individually or jointly to the Commissioner of Public Welfare for a grant under Laws of 1981, ch. 360, § 14 for eligible expenditures to be incurred by the county, by any eligible residential facility with which the county board contracts, or by any public or private organization or any combination of these with which the eligible residential facility contracts.

B. Definitions.

1. "Adult" means a person age 18 and over.

2. "Commissioner" means the Commissioner of the Department of Public Welfare or a duly designated representative.

3. "County board" means the county board of commissioners or a duly designated representative.

4. "Mentally ill person" means a person who has been diagnosed by a physician, a licensed consulting psychologist, or by a clinic or center approved under 12 MCAR § 2.029 as having a mental illness condition. Mental illness is a condition with physiological, psychological or social components, which results in an inability to interpret the environment realistically and in impaired functioning in primary aspects of daily living such as personal relations, living arrangements, work and recreation.

C. Allocation priorities.

1. In response to applications and budgets which meet the requirements of this rule, the commissioner shall allocate grants to county boards for specific eligible facilities. If the appropriation is not sufficient to fund all applications, the commissioner shall use in descending order of priority the following priority categories, and all approved applications and budgets for facilities in a higher category shall be funded before a grant is provided for facilities in a lower category.

a. Facilities operating on July 1, 1980;

b. Facilities operating at the deadline for applications under this rule, to be set by the commissioner; if there is more than one cycle of applications under this rule, this refers to the deadline for the cycle in which application is made;

c. New facilities opening after the deadline for applications under this rule and planning to provide a Category I program, as defined in 12 MCAR § 2.036;

d. New facilities opening after the deadline for applications under this rule and planning to provide a Category II program, as defined in 12 MCAR § 2.036.

2. In each priority category, the commissioner shall give first consideration to facilities within the Rochester State Hospital catchment area counties of Dakota, Dodge, Fillmore, Freeborn, Goodhue, Houston, Mower, Olmsted, Rice, Steele, Wabasha, and Winona.

3. If two or more eligible facilities fall within the same priority category and if the appropriation is not sufficient to fund all facilities within that category, the commissioner shall allocate grants for those facilities which he or she deems most appropriate within the statewide continuum of care for adult mentally ill persons.

D. Eligible facilities. The commissioner shall limit grants to facilities which can show that they will submit a completed application for a license under 12 MCAR § 2.036 within three months of the effective date of the grant award, will attain at least a provisional license under 12 MCAR § 2.036 within six months of the effective date of the grant award and will maintain the license for the remainder of the grant period. Facilities may qualify these objectives for unforeseeable circumstances beyond their control.

E. Content of applications. If two or more counties apply jointly for an award, the chairpersons of all participating county boards shall sign the application.

Six completed copies of the application and budget must be received by the commissioner. Applications must contain at least the information specified in 1.-5., in a form separately identifiable for each facility for which a grant is requested.

1. A description of persons to be served under the grant.

2. A statement of the measureable time-limited outcomes to be accomplished with a grant under this rule. The objectives must relate to compliance with D.

3. A statement as to:

a. How the requirements of 12 MCAR § 2.036 will be complied with;

b. How the proposed services will fit into the local continuum of care; and

c. The proposed sites and providers to be used.

4. Documentation that alternative service and funding resources, including public school community education programs, will be used to the maximum extent possible in meeting requirements of 12 MCAR § 2.036.

5. A statement as to how the county board will determine the effectiveness of the services in helping adult mentally ill persons remain and function in their own communities.

F. Content of budgets; eligible expenditures.

1. A budget must accompany the application, completed on budget forms provided by the commissioner. For each facility for which a grant is requested a separate budget must be submitted showing the total projected income and expenditures for that facility. Except for depreciation, the budget must represent projected cash transactions by the county, the facility and the subcontractors. Straight-line depreciation, calculated according to generally accepted accounting principles, may be included if the purchase of the item being depreciated is not included as an expenditure under this rule.

2. Each budget must separate expenditures according to the following categories, as further defined in 3.-6.:

a. Room and board costs;

b. Program costs separated into previously funded program costs and new program costs, with new program costs further separated into new direct service costs and other new program costs; and

c. Other costs including program costs for residents who are not adult or not mentally ill.

3. "Room and board costs" shall include a reasonable allocation of salaries and other costs related to the costs in a.-d.; however, any of the costs which are new since June 1, 1981, and are required by 12 MCAR § 2.036 shall be considered as other new program costs and not as room and board costs.

a. All directly identifiable costs of normal and special diet food preparation and service;

b. All directly identifiable costs of linen, bedding, laundering and laundry supplies;

c. All directly identifiable costs of housekeeping, including cleaning and lavatory supplies; and

d. All directly identifiable costs for maintenance and operation of the building and grounds, including fuel, electricity, water, supplies and parts and tools to repair and maintain equipment and facilities.

4. "Previously funded program costs" shall include costs for any services provided before June 1, 1981, at least at the level of funding used for those services during May, 1981.

5. Within the limits in I.1., "new direct service costs" are the only costs which may be paid with state funds under this rule. New direct service costs may include the following if the costs are required by 12 MCAR § 2.036 and if the costs are new since June 1, 1981:

a. Salaries and related expenses (including payroll taxes, health insurance, telephone, personal liability insurance, postage, recruitment and in-state travel) of personnel providing services directly to adult mentally ill residents including support personnel to the extent they perform client related duties such as client recordkeeping, individual program planning and on-site program supervision;

KEY: 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." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

b. Consumable supplies used by the personnel described in a. in performing client related duties and by clients in carrying out program activities; and

c. Other expenditures which are shown by the county board to be relatively minor, essential for the facility to meet requirements of 12 MCAR § 2.036 and which cannot be paid for from local funds.

6. "Other new program costs" shall include all new program costs other than those already included in new direct service costs. This shall include, but not be limited to, renovation, construction or rent of buildings, purchase or lease of vehicles or equipment, if these costs are new since June 1, 1981, and are required by 12 MCAR § 2.036.

7. The application shall include an explanation of the allocation of indirect costs to the various budget categories.

8. If there has been a state or federal decision to reduce the previous level of funding for an existing program, expenditures which would otherwise be included under previously funded program costs may be included under new direct service costs or other new program costs. The type of expenditure would determine which of the new cost categories would be appropriate. An application must include documentation of the elimination or reduction in funds by the state or federal government. If the previous funding was from a block grant type of funding source, the percentage reduction used for this exception must not exceed the average percentage reduction for all other services funded by the applicant county board from that funding source.

9. The dollar amounts for the various items included in the budget must not exceed:

a. The prevailing cost of like items in the local county; and

b. The costs that prudent and cost-conscious management would pay for a given item or service.

10. The budget shall relate to a time period beginning on a date set by the county board, but not before the effective date of this rule, and ending June 30, 1983.

11. The budget shall include the projected number of client-days of service per facility and the projected cost per client-day.

G. Approval of applications and budgets. The commissioner shall base his approval of applications and budgets on the applications' and budgets' compliance with this rule and on the availability of funds within the allocation priorities in C.

H. Lines of accountability and flow of funds.

1. The county board shall be the primary local entity responsible to the commissioner for use of all funds paid to it under this rule. Subject to the other requirements of this rule, the commissioner shall pay funds under this rule solely to the county board receiving the award. Payments shall be in the form of an initial advance, with subsequent quarterly payments contingent upon receipt of a completed quarterly financial report from the county board on forms provided by the commissioner.

2. If a county board elects to apply for a grant under this rule, it shall, before submission of the application and budget to the commissioner:

a. Determine which facilities shall be included in the application and budget; and

b. Review and approve the completed application and budget.

3. Payment from the county board to the residential facility must be based on a contract between the county board and the facility. If this contract and the requirements of this rule are complied with, the county board shall, except as provided in 6.b., pay to the facility all funds received by the county board for that facility. The county board shall determine the method of payment to the facility.

4. The contract between the county board and the facility shall specify:

a. How the county board will monitor the facility's compliance with this rule; and

b. How the county board and the facility will monitor subcontractors' compliance with this rule.

5. If two or more county boards apply jointly for a grant, they shall designate a host county board which will carry out the responsibilities in 1. and 3.-4. The assignment of these responsibilities must be agreed to in a contract between the host county board and the other counties.

6. If funds under this rule are to be used by a service provider other than the contracting facility in 3., then:

a. The amount and planned use of those funds must be identified in the application and budget for the facility whose residents will receive the service;

b. Payments to the service provider must be based on a subcontract between the facility and the service provider. This subcontract shall include an agreement by the service provider to comply with this rule. If the county board and the facility agree, payments may be made directly from the county board to the service provider.

I. State and local shares.

1. The commissioner shall, after approval of an application and budget, award a grant equal to the lesser of:

a. Seventy five percent of the new program costs as defined in F.2.b.; or

b. The new direct service costs, as defined in F.5.

2. A county board which applies for a grant for more than one facility may request varying percentages of state and local funds for each facility. The commissioner shall approve the request if the total request for all facilities for that county complies with 1. and if state funds are used only for new direct service costs.

3. The commissioner's award shall specify the amounts awarded for each facility.

4. The 25 percent local share must consist of funds committed specifically for the objectives proposed in the application. Fee income may be counted as part of the local share.

5. If the county board, the facility or the subcontractor receive any income other than county funds as a reimbursement for costs also funded through state or local matching funds under this rule, then:

a. Except as provided in c., the commissioner shall consider this income to be applied first to the local share;

b. If the income exceeds the local share of the approved new program costs, the commissioner shall reduce the state grant by whatever amount the income exceeds the local share; and

c. If the income is from state grants under 12 MCAR § 2.014 or 12 MCAR § 2.022 the commissioner shall reduce the state grant under this rule. The amount of the reduction shall equal the amount by which those other state grants are paying for costs which are also funded by state or local matching funds under this rule.

J. Reporting and maintenance of records.

1. The county board, its contracting facilities and subcontractors shall maintain records to document compliance with this rule and with the objectives in the approved application.

2. The county board shall use forms provided by the commissioner to report the use of funds under this rule, including the number and kinds of persons served, the cost of providing each service, results achieved and other data deemed necessary by the commissioner. Wherever possible the commissioner shall use the same data which is required for reporting under 12 MCAR § 2.036 and under the Community Social Services Act, Minn. Stat. ch. 256E. The commissioner shall use these reports and the evaluation from the county board to develop the report to the Legislature required by Laws of 1981, ch. 360, § 14, subd. 4.

3. The county board, its contracting facilities and subcontractors, shall maintain financial records, using generally accepted accounting principles, in a way so that expenditures can be easily compared with the approved budget, that all sources of income can be readily identified and that documentation is available for all expenditures.

K. Budget revision procedures.

1. After a grant award is made and as long as state funds are used for eligible expenditures under this rule, budget revisions, including transfers between approved facilities within a county, totaling up to ten percent of a facility's approved new program costs may be made with county board approval only. Revisions totaling in excess of that amount require both county board and commissioner's approval.

2. The county board may delegate its approval of budget revisions if the delegation is specified in the county board minutes.

3. All requests for budget revision approval must include the reason for the revision and a statement as to how the revision will affect program objectives. The commissioner shall not grant approval for budget revisions unless the revisions are consistent with the provisions of this rule.

L. Withdrawal of a grant.

1. If the commissioner determines that funds are not needed to implement the approved application, and if the county board agrees the funds are not needed, all or part of the grant may be withdrawn immediately.

KEY: 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." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

2. If the commissioner determines that funds are not being used according to the approved application and budget, all or part of the grant may be withdrawn upon 30 days notice to the affected county board and to the affected facility. Opportunity for hearing pursuant to the Administrative Procedures Act, Minn. Stat. ch. 15, shall be provided before funds are withdrawn.

3. The commissioner may use the funds withdrawn under 1. or 2. to make new awards for other applications and budgets approved under this rule.

M. Other applicable laws and rules.

1. To the extent that the county board, its contracting facilities and subcontractors are also subject to other laws and rules, they shall meet the standards of those laws and rules to be eligible for a grant under this rule.

2. If the commissioner determines that this rule cannot be met immediately, he or she may approve the application if the county board provides a definite, reasonable plan to meet all applicable laws and rules within three months of the date otherwise required by this rule.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Public Welfare
Income Maintenance Bureau

Adopted Rule Governing the Surveillance and Utilization Review Program

The rule proposed and published at *State Register*, Volume 5, Number 24, pp. 972-982, December 15, 1980 (5 S.R. 972) are now adopted with the following amendments.

Rule as Adopted

12 MCAR § 2.064 A.3. The Minnesota Department of Public Welfare, as the state agency responsible for the administration of the Minnesota Medical Assistance, General Assistance Medical Care and Catastrophic Health Expense Protection programs, will issue instructional bulletins, manual materials and forms~~, as necessary to assist others in the interpretation of this rule. Such publications do not have the force and effect of law, however, they do contain the state agency's interpretation of this rule~~ to assist others in complying with this rule.

12 MCAR § 2.064 B.1. "Abuse." A pattern of practice by a provider, or a pattern of health care utilization by a recipient which is inconsistent with sound fiscal, business, or medical practices, and results in unnecessary costs to the programs, or in reimbursements for services that are not medically necessary or that fail to meet professionally recognized standards for health care. Abuse is characterized by, but not limited to, the presence of one of the followung conditions:

a. The repeated submission of claims by a provider from which required material data is missing or incorrect. Examples include but are not limited to: incorrect or missing procedure or diagnosis codes, ~~false~~ incorrect mathematical entries, incorrect ~~or missing~~ third party liability information, incorrect use of procedure code modifiers.

b. The repeated submission of claims by a provider presenting procedure codes which overstate the level or amount of health care provided.

c. The repeated submission of claims by a provider for health care which is not reimbursable under the programs, or the repeated submission of duplicate claims.

Department of Public Welfare

Bureau of Mental Health

Proposed Temporary Rule Relating to Grants for Services to Adult Mentally Ill Persons in Residential Facilities (12 MCAR §2.001 - Temporary)

REQUEST FOR PUBLIC COMMENT

Notice of Intent to Adopt a Temporary Rule

The State Department of Public Welfare proposes to adopt the above entitled temporary rule, as directed by Laws of 1981, Chapter 360, Section 14.

Persons interested in this rule have until October 12, 1981 to submit comments. The proposed temporary rule may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Comments should be sent to:

John Zakelj
Mental Health Bureau, DPW
Centennial Office Building
St. Paul, MN 55155
612/296-4426

Upon adoption of the temporary rule, the proposed rule, this notice, all written comments received, and the adopted temporary rule will be delivered to the Attorney General and to the Revisor of Statutes for review as to form and legality, including the issue of substantial change. The adopted temporary rule will not become effective without the Attorney General's approval and the Revisor of Statute's certification of the rule's form. Persons who wish to be advised of the submission of this material, or who wish to receive a copy of the adopted temporary rule, should submit a

written request to [redacted]n Zakelj.

As required by the Administrative Procedures Act, this temporary rule will be effective for not more than 180 days. The Department will initiate the process for a permanent rule as soon as possible.

The proposed temporary rule will govern grant applications, approval of applications, allocation of grants, and maintenance of service and financial records. The grants will be made to county boards to help residential facilities meet licensing standards. This new grant program was authorized by the 1981 Legislature because most residential facilities for adult mentally ill persons do not have sufficient funding to provide services which are required under the licensing rule, 12 MCAR 2.036.

Proposed 12 MCAR 2.001 (Temporary) is the same rule which had been referred to as proposed temporary rule 12 MCAR 2.012 in the Notice of Intent to Solicit Outside Opinion, published in the State Register, 6 S.R. 119, dated July 27, 1981. The number 12 MCAR 2.012, or DPW Rule 12, will be the number used for this rule when it is proposed for promulgation as a permanent rule early next year.

The estimated cost to the state for the implementation of this rule and a similar permanent rule for the fiscal year ending June 30, 1982 is $1,062,624, and, for the fiscal year ending June 30, 1982, $3,821,000. These are the amounts appropriated for this purpose by Laws of 1981, Chapter 360, Section 2, Subd. 5.

Since Laws of 1981, Chapter 360, Section 14 requires a local match of 25%, the estimated cost to the counties for the fiscal year ending June 30, 1982 is $354,208; and, for the fiscal year ending June 30, 1983, $1,273,667. This is a permissive statute; therefore, the obligations in this rule apply only if a county elects to apply for a grant under this rule.

Copies of this notice and the proposed temporary rule may be obtained by contacting John Zakelj (612/296-4426).

Arthur E. Noot

Commissioner of Public Welfare

FISCAL STATEMENT - Temporary Rule 1

Methodology used to arrive at dollar projections

The purpose of grants under Temporary Rule 1 will be to fund the costs required to meet licensing under Rule 36.

There are currently 301 beds in community residential facilities which would come under Rule 36 Category I (intensive treatment/rehabilitation services) and 1,996 beds which would come under Rule 36 Category II (semi-independent living). It is estimated that projected reduction in hospitalization and provision of residential services to mentally ill persons who are now in the community but not receiving the residential care they need will require 1,100 Category I beds and 3,800 Category II beds by 1985.

Since the Department has decided not require licensure of facilities in the nursing care category under Rule 36, this budget does not include approximately 14,500 mentally ill persons residing in nursing care facilities; it also excludes certain other categories of MI residential care, e.g. psychiatric hospitals, which would not come under Rule 36.

MI residential care in State Hospitals will be covered by Rule 36, but not by temporary Rule 1 because the state hospital budget is included elsewhere in the Department's budget.

Category I

Projected program need over four years is 1,100 beds. There presently exists 301 beds. For the purpose of this cost projection, upgrading the existing 301 beds will cost the same as establishing new beds.

Since the following figures are based on phasing in these beds over a 4 year period, bed days will be calculated by halving the total bed days being funded for the initial phase-in year.

1,100 beds are needed over 4 years, 1,100 ÷ 4 or 275 are the number of beds to be phased in each year. In the first year of the biennium, the per diem rate applied is $8.21. In** the second year of the beinnium, the per diem rate applied is $9.44. Below are the calculations:

1st Year
275 beds x 365 days = 100,375 bed days
100,375 x ½ (phase-in calculation) = 50,188 bed days
50,188 x $8.21 (per diem) = $412,039
$412,039 + 20% fringe of $82,408 = $494,447 (Total 1st Year Costs)

2nd Year
275 beds x 365 days = 100,375 bed days (carried over from 1st year)
100,375 x 1 (phase-in complete by beginning of 2nd year) = 100,375 bed days
100,375 x 9.44 (2nd year per diem) = $947,540
947,540 + 20% fringe = $1,137,046
275 beds x 365 days = 100,375 bed days
100,375 x ½ (phase-in of 2nd 275 beds calculation) = 50,188 bed days
50,188 x 9.44 (2nd year per diem) = $473,770
$473,770 + 20% fringe of $94,754 = $568,524
Total 2nd Year Costs = 1,137,048 + 568,524 = $1,705,572

Category II

Projected program need over four years is 3,800 beds. There presently exists 2,000 beds. Since 3,800 beds are needed over 4 years, 3,800 ÷ 4 (or 950) are the number of beds to be phased in each year. In the first year of the biennium, the per diem rate applied is** 4.72. In the second year the per diem rate applied is 5.43. Below are the calculations:

1st Year
950 beds x 365 days = 346,750 bed days
346,750 x ½ (phase-in calcualtion) = 173,375 bed days
173,375 x 4.72 = $818,330
$818,330 + 20% fringe = $981,996 (Total 1st Year Costs)

2nd Year
950 beds x 365 days = 346,750 days (carried over from 1st year)
346,750 x 1 (Phase-in of 1st 950 beds complete by beginning of 2nd yr) = 346,750 bed days
346,750 x 5.43 (2nd year per diem) = $1,882,853
1,882,853 + 20% fringe = $2,259,424
950 beds x 365 days = 346,750 bed days
346,750 x ½ (phase-in of 2nd 950 beds calculation) = 173,375 bed days
173,375 x 5.43 (2nd year per diem) = $941,426
941,426 + 20% fringe = $1,129,711
Total 2nd Year Costs = 2,259,424 + 1,129,711 = $3,389,135

Summary

	First Year*	Second Year
Category I	494,447	1,705,572
Category II	981,996	3,389,135
Total Year Cost	1,476,443	5,094,707
Total Biennium Cost	$6,571,150	

	First Year	Second Year
Local Share (25%)	369,111	1,273,677
State Share (75%)	1,107,332	3,821,030

Total State $ for 1981-83 biennium $4,928,362

Summary of Rule 36 Funding Projections Over Five Years
(Figures do not include an inflaction factor after year 2)

	Category I	Category II	Total	State Share (75%)	Local Share (25%)
1st year	494,447	981,996	1,476,443	1,107,332	369,110
2nd year	1,705,572	3,389,135	5,094,707	3,821,030	1,273,676
3rd year	2,842,620	5,648,559	8,491,179	6,386,385	2,122,794
4th year	3,979,668	7,907,983	11,887,651	8,915,738	2,971,912
5th year	4,548,192	9,037,694	13,585,886	10,189,414	3,396,471

* As of 9/1/81 the first year estimates are reduced to $1,416,832 for total cost, $354,208 for local share and $1,062,624 for state share. This is due to a reduction in the final appropriation and to a 2 week delay in the projected implementation date.

** All per diem rates are projected averages. Actual payments will vary depending on individual situations.

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of State Department of Public Welfare Temporary Rule 1 Governing Grants for Adult Mentally Ill Persons in Residential Facilities (12 MCAR 2.001 - Temporary)

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter was published in the State Register on September 21, 1981, as a proposed temporary rule pursuant to Minnesota Statutes section 15.0412, subdivision 5.

After proper notice required by M.S. 15.0412 was served upon all persons, associations, and other interested groups registered with the State Department of Public Welfare for that purpose, and after affording interested and affected persons an opportunity to submit written data and views within 20 days of the publication date, reviewing and considering the data and views, and determining that the above captioned rules are needed and reasonable, I find the following:

Before the official publication of the rule, the Department published a notice of intent to solicit outside opinion (State Register, July 27, 1981.) Subsequently, the Department relied heavily on an advisory task force composed of representatives of the various groups to be affected by the rule. The task force and the Department were able to develop a consensus regarding most aspects of the rule.

Only one letter of comment has been received regarding the published rule. That letter supported adoption of the rule with some amendments, discussed below. The letter was from Thomas House in Rochester, and is hereafter referred to as the "Thomas House letter."

In addition to the letter, the Department has received, since publication of the rule, about twenty phone calls requesting clarification as to how the rule would apply in specific situations. As a result of these calls, the Department has prepared some clarifying amendments, which also respond to concerns in the Thomas House letter.

None of the amendments presented below constitute a substantial change from the published rule. All amendments are shown below and also on a complete copy of the amended rule, attached.

B.4. is replaced by: *"Mentally ill person" means a person who has been diagnosed by a physician, a licensed psychologist or a licened consulting psychologist as having a condition which results in an inability to interpret the environment realistically and in impaired functioning in primary aspects of daily living such as personal relations, living arrangements, work and recreation; or which is listed in the International Classification of Diseases*

p. 1, 2

(ICD-9CM), code range 290, 293 - 302.9 or 306 - 314.9, or the corresponding code in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM - III), Axes I, II, or III.

This new definition is the same as the definition used in the proposed rule, except that it uses clearer terms and is more consistent with 12 MCAR 2.029 (Temporary) and with the amendments proposed by the Department on October, 1, 1981 for revised 12 MCAR 2.036. It is particularly important that this definition be the same in this rule and in 12 MCAR 2.036 because the main purpose of this rule is to provide funding for facilities to meet the requirements of 12 MCAR 2.036. When revised 12 MCAR 2.036 is promulgated and when Temporary Rule 1 is proposed as a permanent rule, B.4. will simply refer to 12 MCAR 2.036.

C.1. is amended to read:

C. Allocation priorities.

1. In response to applications and budgets which meet the requirements of this rule, the commissioner shall allocate grants to county boards for specific eligible facilities. If the appropriation is not sufficient to fund all applications, the commissioner shall use the following priorities in descending order: ~~of priority the following priority categories, and all approved applications and budgets for facilities in a higher category shall be funded before a grant is provided for facilities in a lower category.~~

a. Facilities operating on July 1, 1980;

b. Facilities operating at the deadline for applications under this rule, to be set by the commissioner; if there is more than one cycle of applications under this rule, this refers to the deadline for the cycle in which application is made,

c. New facilities opening after the deadline for applications under this new rule and planning to provide a Category I program, as defined in 12 MCAR 2.036;

d. New facilities opening after the deadline for applications under this rule and planning to provide a Category II program, as defined in 12 MCAR 2.036.

2. In each priority ~~category~~, the commissioner shall give first consideration to facilities within the Rochester State Hospital catchment area counties of Dakota, Dodge, Fillmore, Freeborn, Goodhue, Houston, Mower, Olmsted, Rice, Steele, Wabasha, and Winona.

3. If two or more eligible facilities fall within the same priority ~~category~~ and if the appropriation is not sufficient to fund all facilities within that ~~category;~~ priority, the commissioner shall allocate grants for those facilities which he or she deems most appropriate within the statewide continuum of care for adult mentally ill persons.

The Thomas House letter suggested the amendment deleting the last phrase of C.1. The Department agrees with that, but for a different reason than is stated in the Thomas House letter. The writers of that letter apparently confused the references to higher and lower priority categories with the licensure categories under proposed 12 MCAR 2.036. Actually, the phrase being deleted was originally included merely to clarify the preceding clause, regarding priority categories, not licensure categories. Without the "problem" phrase, C.1. still says the same thing; the phrase should be deleted because it is both redundant and confusing. In addition, to reduce the confusion, "priority category" is replaced by the simpler term "priority" in C.1., C.2. and C.3. There is no resulting change in meaning.

E. is amended to read:

E. Content of applications. ~~*If two or more counties apply jointly for an award, the chairpersons of all participating county boards shall sign the application.*~~

Six completed copies of the application and budget must be received by the commissioner. Applications must contain at least the information specified in 1. - 5., in a form separately identifiable for each facility for which a grant is requested.

1. A description of persons to be served under the grant.
2. A statement of the measureable time-limited outcomes to be accomplished with a grant under this rule. The objectives must relate to compliance with D.
3. A statement as to:

a. How the requirements of 12 MCAR 2.036 will be complied with;
b. How the proposed services will fit into the local continuum of care;
c. The proposed sites and providers to be used.
d. How

~~*4. Documentation that*~~ *alternative service and funding resources, including public school community education programs, will be used to the maximum extent possible in meeting requirements of 12 MCAR 2.036.; and*

e.

~~*5. A statement as to*~~ *How the county board will determine the effectiveness of the services in helping adult mentally ill persons remain and function in their own communities.*

The first paragraph in E. is deleted because it is inconsistent with the fact that the rule does not require the county chairman of a county applying singly to sign. Also, it is unrealistic since some facilities may serve individuals from as many as 20 counties. It was not intended that all 20 counties would have to sign, nor that admission to the facility would then be limited only to signing counties. There is an issue of accountability and authority here, but this is fully and adequately addressed in a more realistic manner in H.5. Deleting this paragraph addresses the Thomas House concern as to whether a facility funded by one county was limited to serving residents from that county alone. With the deletion of

this paragraph, H.5. then allows agreements to be developed with placing counties at any time.

The amendments in E.3.b., E.4 and E.5. are a simplification of the language and format, partially in response to Thomas House's request to simplify the rule and to clarify the word "documentation" in E.4.

F.3. is amended to read: *these costs,* instead of *the costs* in line 3 of F.3. This amendment corrects a typographical error, and does not change the meaning.

The Department would have preferred more amendments simplifying the rule, as suggested by the Thomas House letter. However, the requirements of the authorizing legislation are rather complex to begin with and, at this time, the Department is not aware of a simpler way to implement the legislation.

The Thomas House letter raises the issue of feecharging. Temporary Rule 1 is intentionally silent on that issue to allow counties maximum flexibility within other related requirements (e.g., M.S. 256E.08, Subd. 6, regarding fees for social services.) No additional limitations on counties' fee-charging abilities are necessary. In response to a related issue raised by Thomas House, Temporary Rule 1 does allow fees to be counted as part of the local share (I.4.)

The Thomas House letter expresses the view that existing Rule 22 programs should have the option of applying for funding under this rule. There is nothing in Temporary Rule 1 which would prohibit these programs from applying for a grant to cover new costs in addition to those already funded through Rule 22. However, Ch. 360, Art. II, Sec. 14, Subd. 2 clearly prohibits Temporary Rule 1 funds from supplanting existing resources, unless the reduction in existing funding is due to a state or federal decision. If there should be a state or federal decision to reduce existing funding, Temporary Rule 1 is legally unable to guarantee the full replacement suggested in the Thomas House letter, because Ch. 360, Art. II, Sec. 14 is subject to a limited appropriation, and because the matching rate (75%) specified in Subd. 4 is different from matching rates under most other funding resources.

Other than the amendments presented above, the rule as adopted is identical to the rule as it was proposed in the September 21, 1981 State Register. The rule shall be submitted to the Attorney General and to the Revisor of Statutes for review as required by M.S. 15.0412, Subd. 5.

Now therefore it is ordered that, in light of the fact that the need for and reasonableness of these rule amendments have been demonstrated, the temporary rule, as amended, identified as Temporary Rule 1 (12 MCAR 2.001 - Temporary), Grants for Services to Adult Mentally Ill Persons in Residential

Facilities, is hereby adopted and shall become effective within the time and the procedure provided by M.S. 15.0412, Subd. 5.

Dated: October 22 1981

State of Minnesota
Department of Public Welfare

ARTHUR E. NOOT
COMMISSIONER

CS/gfa

NOTE: This Statement is not legally required for a temporary rule.
It has been prepared for this rule for explanatory purposes only.

10/22/81

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Adoption
of the Department of Public Welfare
Temporary Rule 1 Governing Grants for
Services to Adult Mentally Ill Persons
in Residential Facilities
(12 MCAR § 2.001-Temporary)

STATEMENT OF NEED
AND REASONABLENESS

Statutory Authority

Temporary Rule 1 has been developed in response to the specific legislative directive contained in Laws of 1981, Chapter 360, Article II, Section 14, Subdivision 4, "The Commissioner shall promulgate a temporary and permament rule to govern grant applications, approval of applications, allocation of grants, and maintenance of service and financial records by grant recipients."

This temporary rule implements the new grant program established by Chapter 360, Article II, Section 14, to assist residential facilities in meeting licensure requirements under DPW Rule 36.

Introduction and Background:

The need in Minnesota for licensure of facilities for adult mentally ill persons relates directly to a national trend to rely less on large institutions and more on community programs to provide care and treatment for mentally ill adults. This trend, often called "deinstitutionalization", has created a need for an expanded system of outpatient services and residential programs.

State hospital daily census figures clearly indicate the effects of this shift toward deinstitutionalization. In 1962, the mentally ill population of Minnesota's state mental institutions numbered 8,709. By January, 1980, this figure had dropped to 1,530; less than 20% of the 1962 total. However, although the hospital populations have decreased substantially, the number of persons still needing mental health services have not. What began as a humanitarian effort has evolved into a tragedy for many, due to the hundreds of mentally ill persons who have been forced to reside in substandard community facilities which offer little or no mental health care and treatment.

By appropriating $4.9 million, by establishing a new grant program (Chapter 360, Article II, Section 14), and by directing that this rule be written, the Legislature has recognized the need to bring existing community residential facilities up to a minimum level of both program and physical plant standards. Temporary Rule 1 will enable these new funds to be granted to county boards so that residential facilities will now be able to comply with licensing standards.

Temporary Rule 1 has been developed by the Department of Public Welfare with considerable assistance from an advisory task force which included representatives from county boards, county social service agencies, county mental health agencies, mental health centers, residential facilities, University research staff, and advocate groups (see list of members attached). After careful discussion, this task force developed a consensus as to the best methods for implementing this new legislation. This consensus is presented in Temporary Rule 1.

Need and Reasonableness - Section by Section

Section A. provides for flexibility in the methods of service provision and ensures that, whichever methods the county board does decide to use to provide the service, the use of funds will still be covered by this rule.

In Section B. 1., the definition of adult duplicates the definition in M.S. 645.45. It is included here because most residential facilities which might receive funds under this rule do not have easy access to statute books and, if they did, they might not be aware of M.S. 645.45. "Adult" is popularly thought of as referring to age 16 in some circumstances, 18 in others, 19 in others, and 21 in yet other circumstances. With this one line specifying "age 18", this rule will accurately communicate legislative intent, prevent a great deal of confusion, and simplify the requirements for many people. The definition of adult is important for this rule, since the authorizing statute limits funds to services for adult mentally ill persons.

In Section B. 2. and 3., the definitions of Commissioner and county board allow use of these abbreviations throughout the rule. Including "duly designated representative" recognizes the fact that most of the functions assigned in the rule to either the Commissioner or the county board are, in reality, usually assigned to subordinates.

In Section B. 4., the definition of mentally ill person is intended to be the same as the definition which will be used in the revised DPW Rule 36. This will allow for consistency between the two rules. It is necessary to define a mentally ill person specifically for this rule because the authorizing statute limits funds to services for adult mentally ill persons. This definition is essentially also the same as the one used for Temporary DPW Rule 29.

Section C. 1. incorporates the statutory priority for facilities operating on July 1, 1980 (Chapter 360, Article II, Section 14, Subdivision 2) and adds additional priorities which will be applied after all applications meeting the statutory priority are funded. The priorities shown are consistent with testimony provided when the authorizing legislation and the appropriation were being discussed at legislative hearings. These priorities also reflect the intent of the citizens' advisory task force which assisted the Department in drafting revised DPW Rule 36.

Section C. 2. provides for special consideration for the Rochester State Hospital area. This recognizes that quality community care in that area may be particularly urgent and necessary due to the imminent closing of Rochester State Hospital. Since the word "consideration" rather than "priority" is used, the Commissioner will be able to use his discretion in deciding whether an application from the Rochester area does, in fact, present greater needs than applications from other areas of the state. This section is not planned to be included in the permanent rule. Since there may be other state institutions closing in the future, there would be no point in providing permanent special consideration just for the Rochester area.

Section C. 3. recognizes that, even with the priorities laid out in C. 1-2., there may still be difficult situations where the Commissioner will have to apply additional consideration to determine which facilities will receive the limited funds appropriated. Section C.3. specifies the criterion to be used in that process. The Department and the advisory task force considered alternative criteria for this section and settled on "appropriateness within the statewide continuum of care" as being the most important and the most practical as far as the ability of reviewers to judge.

Section D. embodies the basic legislative intent of this appropriation, i.e., to assist residential facilities to attain and maintain licensure standards under DPW Rule 36. This section sets forth realistic time lines within which licensure will have to be attained. It also recognizes that there may sometimes be unforeseeable circumstances beyond the control of the facility and that the facility should not be penalized for such circumstances. However, note that the word "unforeseeable" is included; this means that, if it is evident at the time of application that circumstances beyond the control of the facility will prevent licensure, then the facility should not be eligible for a grant. There is no point in granting funds to assist a facility to become licensed if it is clear that licensure will not be possible.

Section E. describes the format required for applications to be considered for funding. This format was chosen because it is readily understood, easy to use by applicants and reviewers, and one that county applicants are most likely to be familiar with, since the Department has used similar formats previously in awarding grants under DPW Rules 14 and 22. Familiarty with the format will aid in submitting acceptable applications.

Section E. 2. implements the basic purpose of the appropriation by requiring that objectives under the grant relate to Section D. (see narrative above regarding D.).

Section E. 3. e. requires that the evaluation provisions in Chapter 360, Article II, Section 14, Subdivision 4, be implemented at the local level. (Section J. 2. of this rule provides for evaluation data to be submitted to the state so that evaluation can also be done at the state level.) The statute indicates that the criterion for evaluation at the state level is "effectiveness of the services in helping adult mentally ill persons remain and function in their own communities." For the state level evaluation to be effective, it is necessary for the same type of evaluation to be first carried out at the local level. Also, it is reasonable to assume that, since the Legislature intended that this evaluation criterion be used

in the state report back to the Legislature, that it was also intended that county boards refer to the same criterion.

Section F. 1. defines what must be included in the budget which is required by Chapter 360, Article II, Section 14. It specifies that the budget must represent cash transactions as opposed to in-kind transactions. (In-kind transactions, such as the "cost" of volunteer time, donated supplies, etc., are included under a few other grant programs.) It is the Department's interpretation that the term "County's cost" in Chapter 360, Article II, Section 14, Subdivision 3, was intended to mean cash transactions in the manner provided in F. 1.

The requirement in F. 1. to have separate budgets for each facility is necessary for meaningful grant review and subsequent monitoring. This will also be useful later in presentations to the Legislature as far as the amounts and types of costs involved in getting facilities licensed. The department expects that each facility will have very different needs. To allow one budget for all facilities in a county would bury these differences and make it impossible to determine whether funds would really be used to attain licensure standards.

Sections F. 2-6. define the following budget terms which are used in the authorizing legislation: room and board costs, direct service costs; in addition, these sections create and define the following terms which are implied by the authorizing legislation: previously funded program costs and other new program costs. Since these budgetary terms interrelate so closely and since a key aspect of the definitions is that these terms represent individual, mutually exclusive parts of the total budget (as stated by F. 2.), the body of the rule is a more appropriate place for these definitions, rather than the definition section, B.

Another key aspect of these budget terms is the differentiation between "previously funded" and "new", with the dividing line being June 1, 1981. These terms are necessary to implement Chapter 360, Article II, Section 14, Subdivision 2, which requires that "funds shall not be used to supplant or reduce local, state or federal expenditure levels supporting existing resources..." It is the Department's interpretation that "existing" means as of the date the authorizing legislation was signed, i.e., June 1, 1981. The Department considered the alternative interpretation, "existing at the time of application", and concluded that that interpretation would act as an incentive to counties to not allow any new funding for these facilities until the county could obtain a grant under this new program. This was clearly not the intent of this legislation.

In F. 5. and 6., the differentiation is made between direct service and other program costs. This is necessary to implement the requirement in Chapter 360, Article II, Section 14, Subdivision 2. that the state funds be used for direct service costs only. F. 5. defines direct service costs in the same way as is done in DPW Rule 14.

Even though this new grant program will only be for new program costs, Section F. requires the facility's entire budget to be shown; this is necessary for grant reviewers to be able to monitor whether costs have been properly allocated to the various budget categories. It is common for grant applicants in general to try to allocate costs in such a way as to

place as much as possible of the grant applicants' total costs into the budget category to be funded under the grant. Some grant applicants even try to claim the same expenses under two or more different grant programs. With the requirement for the entire budget to be shown and the additional requirement to provide an explanation for the allocation of indirect costs (F. 6.), inappropriate cost allocations and "double-funding" can be controlled.

The budget information included in the applications regarding budget categories not funded under this grant program will also be useful to the Legislature, which has, in the past, asked for information regarding the total funding picture for residential facilities.

Section F. 8. implements the exception provided for in Chapter 360, Article II, Section 14, Subdivision 2: "Funds shall not be used to supplant... existing resources unless the reduction in available monies is the result of a state or federal decision..."

Section F. 9. is similar to cost-control provisions in DPW Rule 49 and is in response to legislative and public concerns to limit costs to reasonable levels wherever possible.

Section F. 10. provides for county board flexibility as far as a starting date for the grant applied for, as long as the date is after the effective date of this rule. In some cases, this will enable a county to begin spending its local matching funds even before a grant is approved, thus allowing for earlier compliance with licensing requirements.

Section F. 11. is a commonly accepted item usually included as part of a residential facility budget under other funding programs. It enables the grant reviewers to judge the reasonableness of each facility's costs on a more comparable basis with other facilities.

Section G. brings together the other sections of the rule by making it clear that approval of applications and budgets will be based on compliance with the requirements of this rule. The last line of G. recognizes the fact that the Legislature has appropriated a limited amount of funds for this program and that, even if an applicant meets the other requirements of this rule, approval may not be possible if there are insufficient funds.

Section H. allows counties flexibility as to combinations of counties, numbers and types of service providers, and combinations of service providers to be used under this grant program. At the same time, Section H. insures that lines of accountability will be maintained.

Chapter 360, Article II, Section 14, clearly places the county board in the central position at the local level for implementation of this program.

Section H., especially H. 2., clarifies and defines this central position. This is necessary in order for residential facilities to understand and co-operate with county requirements as part of this grant program.

Section H. 3. is necessary to insure that funds will be used only for residential facilities, as required by the authorizing legislation. The exception under H. 6. b. allows for payments to be made directly to another service provider if the residential facility agrees. This is included for those instances where the service provider will provide services required under DPW Rule 36 for residents of the facilities, but the service will not be provided by the facilities themselves; and where it may be more practical and efficient for funds to flow directly from the county to the service provider. The required agreement by the residential facility should help insure that funds get used only for residents of that facility.

In order to provide counties and facilities maximum flexibility under the law, H. 6. is intentionally silent as to the type of service provider which could be used. The service provider could even be the county itself, if agreed to by the facility. Agreement by the facility is essential because, under the licensing statute (M.S. 245.781), it is the facility, not the county, which is held accountable for compliance with licensing standards. Therefore, the facility should have some control over the methods used for that facility to attain licensure.

Section I. 1. combines the two statutory requirements that: 1) state funds be used for direct service costs only (Chapter 360, Article II, Section 14, Subdivision 2); and 2) that state funds pay for 75% of the county's costs, including both direct service and other costs, as approved by the Commissioner (same statute, Subdivision 3). Subdivision 3 is a general provision providing for a 75% overall participation rate. Subdivision 3 refers to Subdivision 2 for the particular requirements, one of which is the requirement for using state funds for direct service only. Note that there is no expectation that state funds will always pay for all direct service costs. In fact, Subdivision 2 specifically allows for the local share to also be used for direct service costs.

One implication of I. 1. is that, in some cases, i.e. where the direct service costs are less than 75%, the grant will be less than 75%. This will seemingly be in conflict with Subdivision 3; but it will be legally correct under M.S. 645.26, Subdivision 1, which calls for particular provisions to prevail over conflicting general provisions. Another possible situation under I. 1. would be the case where the grant equals 75% of the total county costs, but is less than the direct service costs. As noted, in the previous paragraph, this would comply with both subdivisions and would not conflict with the special provisions of Subdivision 2. Subd. 2 does not require that the grant pay for <u>all</u> direct service costs.

Section I. 2. relates back to the F. 1. requirement for separate budgets for each facility. I. 2. recognizes that, partially due to the requirement that state funds be used for direct service only, some counties may have to, or wish to, place more than 25% local funding in certain facilities. I. 2.

will allow the county the flexibility to count the "extra" local match at one facility towards the local match requirement for another facility. This flexibility is within the scope of Chapter 360, Article II, Section 14, Subdivision 3, which relates the 75% to "the county's cost", not each facility's cost.

Section I. 4. is necessary to assure the commitment of the required local matching funds. Allowing the counting of fee income as part of the local match is reasonable as an incentive to county boards to collect any such fees.

Section I. 5. states how income, other than state and county matching funds under this rule, may be used. Since some projects will be able to earn some fee income, it is necessary to establish in the rule the basis for allocating this revenue in relation to the state and local funds committed to these facilities.

Section I. 5. b. insures that counties and facilities will not receive double payment from this grant and from fees for the same expenses. F. 5. c. does the same thing in relation to grants received under DPW Rules 14 and 22, and also insures that these other state grants will not be used as the local matching funds required under this rule. Although grants under Rules 14 and 22 are sometimes used for the same purposes as will the grants under Temporary Rule 1, it was not the intention of the Legislature that these different grants be combined to pay for the entire cost of the program.

Section J. defines the record-keeping and reporting requirements required by Chapter 360, Article II, Section 14, Subdivision 4. so that the intended level of accountability is assured, but in the least burdensome manner possible.

Section K. specifies the conditions under which budget revisions may be made. It recognizes that budgets ~~for new projects~~ may have to be modified in the light of actual experience, a provision that is both necessary and reasonable. Allowing the county board to delegate approval of budget revisions is reasonable, if the board wishes to do so.

Section L. 1. and 3. allows for funds to be reallocated if they are clearly not needed for a particular facility. It is reasonable to assume that the Legislature intended that the entire appropriation be used and, if there are enough acceptable applications, to use the appropriation properly. It is also reasonable to authorize the Commissioner to reallocate unused funds to achieve this purpose.

Section L. 2. provides for the extreme situation where the Commissioner would determine that funds are not being used appropriately, and the county board would not agree with that determination. This section allows for a grant to be withdrawn upon reasonable (30 days) notice, with full appeal provisions. The authority for this can be found in Chapter 360, Article II,

Section 14, Subdivision 3, which states that "Grants... shall finance 75% of the county's costs... as provided in Subdivision 2", and Subdivision 2, which states that grants are to be made only for "applications and budgets approved by the Commissioner". This means that grants are not to be used for costs which are not approved by the Commissioner. Therefore, if the Commissioner did find that the funds were being used for unapproved costs, it would be his duty to take corrective action. Section L. 2. provides for a specific form of corrective action to be available to the Commissioner to use.

Section M. is necessary to assure that: 1) other applicable laws and rules are complied with by the grant recipients and 2) a maximum time, three months, is specified for meeting all applicable laws and rules.

BS/gbd

TEMPORARY RULE 1 ADVISORY TASK FORCE
JULY, 1981

CHAIR: Craig Brooks
Winona County Social Services
Court House
Winona, MN 55987
(507) 452-8200

DEPARTMENT STAFF: John Zakelj, Management Support Division, 296-4426
Janet Bisbee, Mental Illness Program Division, 296-1858
John Sauer, Mental Illness Program Division, 296-4497
Jay Bamberry, Mental Illness Program Division, 296-3923
Department of Public Welfare, Centennial Building
St. Paul, Minnesota 55155

Task Force: Association of Minnesota Counties (representative to be designated)

Temporary: Bev Driscoll
AMC
2305 Ford Parkway
St. Paul, MN 55116
698-4212

Steve Becker
Mental Health Advocates Coalition
265 Fort Road
St. Paul, MN 55102
222-2741

Allen Brown
Human Development Center
1401 East First Street
Duluth, MN 55805
(218) 728-4491

Bill Conley
Mental Health Association
of Minnesota
6715 Minnetonka Boulevard
St. Louis Park, MN 55426
925-5806

David Doth
Health Service Research Center
University of Minnesota
420 Delaware Street, Box 197
Minneapolis, MN 55455
376-1895 or 376-3254

Dwaine Glasenapp
Ramsey County Mental Health
Department
160 East Kellogg Boulevard
St. Paul, MN 55101
298-4016

Harriet Grinstead
Hope Transition Center
1471 Como Avenue
St. Paul, MN 55108
644-7961

Dave Salsman
Merritt House
Biwabik, MN 55708
(218) 865-6743

Marge Wherley
Hennepin County Mental
Health Division
527 Park Avenue
Minneapolis, MN 55415
348-8010

BM/aau

Transitional Housing Opportunities
For Mentally Ill and Socially
Handicapped

THOMAS House Inc.

Lynn Haagenson, ACSW, Director
Telephone 507-281-1476
15 - 6th Avenue S.E.
Rochester, Minnesota 55901

BOARD OF DIRECTORS
James M. Bray
William Canfield
Alfred Dahlberg
president
Barbara Erbe
Mary Frisvold
Carl Griffin
Geraldine Hagedorn
vice president
LeRoy Hedgecock
Kenneth Herold
Fredrick Hubbard
Shirley Klampe
Jolene Litin
secretary
Anna McGee
Michael R. Miller
treasurer
Jo Omar
Anneliese Opitz
Julie Phyliky
Vicky Pileggi
Jarrett W. Richardson
Peg (Margaret) Thomas

September 28, 1981

John Zakelj
Mental Illness Division
Department of Public Welfare
Centennial Office Building
St.Paul, MN. 55155

Dear Mr. Zakelj:

I am writing on behalf of myself and the 18 member Board of Directors of THOMAS House, Inc. I wish to comment on the proposed Temporary Rule 1 relating to grants for services to adult mentally ill persons in residential facilities. I will structure my comments so that at the beginning of each paragraph is the page and the lines which concern me in the proposed Rule.

First, however, a general comment about the Rule as a whole. We believe that it is too complex in it's current form to be readily usable. I have been doing budgets for Rule 14 and Rule 22 projects for the past three years and after reading the Rule several times and making a diligent effort to understand it, I still must say that I could not sit down and write a THOMAS House budget which would conform to the Rule. If that is true for me as an experienced budget writer, then for a new program it would be doubly true. The complexity automatically bias's it in favor of the more populous metro areas where there is an abundance of professional expertise to assist in interpreting the Rule.

We also wonder whether a facility funded by one county is limited to serving clients from that county only. If clients from other counties are served, does a special contract need to exist between counties? If fees are to be charged to other counties for residents placed within the facility, do the host county clients also need to be charged a fee? If such fees are charged, either for host counties clients or other county clients, does that count as local fee income?

(pg.2, line 8-10) We recommend that a period be placed after the word "categories" in line 8 and the remainder of this paragraph through the end of line 10 be struck. We think that this section will create an imbalance of Category I facilities in rural areas. Because a sparsely populated area may be able to have only one Rule 36 facility, the tendency might be for county boards to create a Category I facility to insure funding when what the area actually needs might be a Category 2 facility. We do not believe that the intent of the Legislature was to dictate to rural areas what type of Rule 36 facility they should build. Rather, the Legislature has clearly said that the determination of social service needs for a given area should be made by that area itself, not DPW through a funding Rule.

(pg.3, line 24) We don't understand what the word "documentation" refers to. Can this be clarified?

(pgs.4 & 5 incl.) In the second and subsequent years of funding under this Rule, do new program costs and new direct service costs become old program costs and old direct service costs and therefore not fundable under this Rule?

(pg.5, line 24-36) This section seems to prohibit existing Rule 22 programs from switching to funding under this Rule until Rule 22 funds have been withdrawn by the state. We believe that programs currently funded under Rule 22 should have the option of applying for funding under this Rule at any given point from adoption of the Temporary Rule through the ending of Rule 22 funds in the state.

(pg.6, line 22-23) The THOMAS House grant award letters for both Rule 14 and Rule 22 stated that payment would be in the form of an initial 25% advance with subsequent quarterly payments contingent upon receipt of a completed quarterly financial report. When our check had not arrived we called DPW and talked to Mr. Gary Leier. Mr. Leier informed us that the internal policy had been changed and that no advances would be made. Our first quarter checks were being held up pending receipt of the previous quarters financial statements. Given those events, has the policy again changed? Or has it changed only in relation to this rule? Our Rule 14 "advance" actually arrived in Olmsted County during the first week of September, two months past when it should have been here.

(pg.7, lines 28-32) As we interpret this section, an existing program could conceivably face a cut in funds by switching to funding under this rule. There should be a provision saying that programs previously funded under Rule 22 will receive no less from the state then they received in the past fiscal year.

Thank you for the opportunity to comment on the proposed Rule. We support adoption of this Temporary Rule with the previously mentioned alterations.

Sincerely,

Lynn Haagenson

Lynn Haagenson

LH/mc

In the Matter of the Proposed Adoption of State Department of Public Welfare Temporary Rule 1 Governing Grants for Adult Mentally Ill Persons in Residential Facilities (12 MCAR 2.001 - Temporary)

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General, Allen Giles, do hereby declare that I have examined the 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.

Allen R. Giles

Special Assistant
Attorney General

Dated: October 23, 1981