

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
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Our File No. 896

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 3-14-83
DATE FOR REVIEW 3-23-83
DATE DUE 3-28-83

Adopted w/a hearing _____
Adopted w/o hearing ↘
Temporary rule _____

Approved 3/25/83 Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency 3/28/83

Date filed w/Secretary of State 3/28/83 Revisor approved 3.16.83
disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed See SR.

✓ Order Adopting 3.8.83 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 3.1.82

✓ 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
1.5.83 At least 30 days prior to ~~hearing~~/adoption

✓ Affidavit Add. Mailing

✓ Mailing list Certificate

✓ Publication in State Register
1.10.83 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

✓ Certificate of Board's Resolution Adopting Rules

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

✓ Affidavit of Mailing Notice of Submission to Attorney General

Notice of Submission to the Attorney General

✓ no requests

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : LEONARD LEVINE, COMMISSIONER OF PUBLIC WELFARE DATE: 3/25/83

Attn: RUTH MICKELSON, Special Assistant Attorney General

FROM : LARRY D. STARNS, LDS
Special Assistant
Attorney General

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Adoption of Rules Governing Grants for Services to Adult Mentally Ill Persons in Residential Facilities

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;

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.

Encs.
LDS/ls
cc: Ms. Kathy Burek
Mr. Duane Harves

AG copy.

Department of Public Welfare
Mental Health Bureau

Adopted Rules Governing Grants for Services to Adult Mentally Ill Persons in Residential Facilities (12 MCAR SS 2.0120-2.0129)

Rules as Adopted

12 MCAR S 2.0120 Scope.

Rules 12 MCAR SS 2.0120-2.0129 apply to county boards that apply individually or jointly to the Commissioner of Public Welfare for a grant under Minnesota Statutes, section 245.73. These grants are for eligible expenditures to be incurred by the county, by an eligible residential facility with which the county board contracts, or by a public or private organization or a combination of public and private organizations with which the eligible residential facility contracts.

12 MCAR S 2.0121 Definitions.

A. Scope. The terms used in 12 MCAR SS 2.0122-2.0129 have the meanings given them in B.-E.

B. Adult. "Adult" means a person who is 18 years old or older.

C. Commissioner. "Commissioner" means the Commissioner of Public Welfare or a designated representative.

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

E. Mentally ill person. "Mentally ill person" means a person who has been diagnosed by a physician, a licensed psychologist, or a licensed consulting psychologist as having a condition:

1. 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

2. which is listed in the code range 290, 293-302.9 or 306-314.9 of the International Classification of Diseases,

(ICD-9-CM) issued by the National Center for Health Statistics (Ann Arbor, Michigan: Edwards Brothers, 1978) or in the corresponding code on Axes I, II, or III in the Diagnostic and Statistical Manual of Mental Disorders, (DSM-III) issued by the American Psychiatric Association (Washington, D.C., 1980).

12 MCAR S 2.0122 Allocation of grants.

A. Deadlines for applications. The commissioner shall set the deadlines for grant applications made under Minnesota Statutes, section 245.73. The commissioner shall inform county boards of the deadlines. If the commissioner establishes more than one review cycle, the term "deadline for applications" as used in B.3.-5. shall mean the deadline for the cycle in which application is made.

B. Priorities. In response to applications and budgets that meet the requirements of 12 MCAR S 2.0123 and 12 MCAR S 2.0124, 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 order of descending priorities:

1. facilities previously funded under Minnesota Statutes, section 245.73, unless otherwise indicated by law;

2. facilities operating on July 1, 1980;

3. facilities operating at the deadline for applications;

4. new facilities opening after the deadline for applications and planning to provide a Category I program, as defined in 12 MCAR S 2.036;

5. new facilities opening after the deadline for applications and planning to provide a Category II program, as defined in 12 MCAR S 2.036.

C. First consideration. In each priority, for the biennium ending June 30, 1983, 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.

D. More than one facility in a priority. If two or more

eligible facilities fall within the same priority and if the appropriation is not sufficient to fund all facilities within that 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.

E. Eligible facilities. The commissioner shall limit grants to facilities that can show that they will:

1. submit a completed application for a license under 12 MCAR S 2.036 within three months of the effective date of the grant award;

2. attain at least a provisional license under 12 MCAR S 2.036 within six months of the effective date of the grant award; and

3. maintain the license for the remainder of the grant period.

F. Approval of applications and budgets. The commissioner shall base his or her approval of applications and budgets on the applications' and budgets' compliance with Minnesota Statutes, section 245.73 and 12 MCAR SS 2.0120-2.0129 and on the availability of funds within the allocation priorities in B.-D.

G. Compliance with other rules and laws. 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 Minnesota Statutes, section 245.73.

12 MCAR S 2.0123 Application criteria.

In order to qualify for a grant under Minnesota Statutes, section 245.73, the county board shall submit to the commissioner six completed copies of the application and budget. The county board shall complete a separately identifiable application for each facility for which a grant is requested. The application must at least:

A. describe the persons to be served under the grant;

B. state the measureable time-specified objectives to be accomplished with the grant (these objectives must comply with 12 MCAR S 2.0122 E.);

C. explain how the requirements of 12 MCAR S 2.036 will be complied with;

D. explain how the proposed services will fit into the local continuum of care;

E. name the proposed sites and providers to be used;

F. explain how alternative service and funding resources, including public school community education programs, will be used to the maximum extent possible in meeting the requirements of 12 MCAR S 2.036;

G. explain how the county board will determine the effectiveness of the services in helping adult mentally ill persons remain and function in their own communities; and

H. briefly describe the evaluation results to date for facilities previously funded under Minnesota Statutes, section 245.73.

12 MCAR S 2.0124 Budgets.

A. Income and expenditures. A budget must accompany each application for a grant under Minnesota Statutes, section 245.73 and must be 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 in the budget for the current period or for any other budget periods.

B. Separate expenditure categories. Each budget must separate expenditures according to the following categories, as further defined in C.-F.:

1. room and board and previously funded program costs;

2. new program costs separated into new direct service costs and other new program costs; and

3. other costs including program costs for residents who

are not adult, not mentally ill, or not Minnesota residents as defined by Minnesota Statutes, section 256E.08, subdivision 7.

C. Room and board costs. Room and board costs must include the following costs:

1. all directly identifiable costs of normal and special diet food preparation and service;

2. all directly identifiable costs of linen, bedding, laundering, and laundry supplies;

3. all directly identifiable costs of housekeeping, including cleaning and lavatory supplies;

4. 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; and

5. a reasonable allocation of salaries and other costs related to 1.-4.

However, costs in 1.-5. which are new since June 1, 1981 and which are required by 12 MCAR S 2.036 are other new program costs and are not room and board costs.

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

E. New direct service costs. Within the limits in 12 MCAR S 2.0126 A., new direct service costs are the only costs which may be paid with state funds under Minnesota Statutes, section 245.73. 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:

1. salaries and related expenses including payroll taxes, health insurance, retirement contributions, telephone, personal liability insurance, postage, recruitment, staff training, and in-state travel of personnel providing services directly to adult mentally ill residents. Support personnel are included to the extent they perform client related duties such as client record keeping, individual program planning, and on-site program

supervision;

2. consumable supplies used by the personnel described in 1. in performing client related duties and by clients in carrying out program activities; and

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

F. Other new program costs. Other new program costs must include all new program costs other than those already included in new direct service costs. These costs must include, but not be limited to, the costs of renovation, construction or rent of buildings, and 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. These costs may be paid for with local matching funds, but may not be paid for with state funds provided under Minnesota Statutes, section 245.73.

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

H. Elimination or reduction in funds by state or federal government. 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. 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.

I. Limits on dollar amounts for items. The dollar amounts for the various items included in the budget must not exceed the prevailing cost of like items in the local county and the costs that prudent and cost-conscious management would pay for a given item or service.

J. Time frame for budget. The budget shall relate to a time period set by the county board within the time limits set by the appropriation.

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

12 MCAR S 2.0125 Lines of accountability and flow of funds.

A. Payments to the county board. The county board shall be the primary local entity responsible to the commissioner for use of all funds paid to it under Minnesota Statutes, section 245.73. The commissioner shall pay funds under Minnesota Statutes, section 245.73 solely to county boards submitting an application and budget approved under 12 MCAR S 2.0122 E. 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. If actual expenditures by the county, its contracting facilities, and subcontractors are less than provided in the approved budget, the commissioner shall reduce the quarterly payments so that the grant remains within the limits in 12 MCAR S 2.0126 A.

B. Local review of applications. If a county board elects to apply for a grant under Minnesota Statutes, section 245.73, then before submission of the application and budget to the commissioner, the county board shall determine which facilities shall be included in the application and budget, and shall review and approve the completed application and budget.

C. Payment to the residential facility. 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 12 MCAR SS 2.0120-2.0129 are complied with, the county board shall, except as provided in F.2., 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.

D. County board and facility contract. The contract between

the county board and the facility must specify how the county board will monitor the facility's compliance with 12 MCAR SS 2.0120-2.0129 and how the county board and the facility will monitor the subcontractors' compliance with 12 MCAR SS 2.0120-2.0129.

E. Joint applications for a grant. If two or more county boards apply jointly for a grant, they shall designate a host county board that will carry out the responsibilities in A., C., and D. The assignment of these responsibilities must be agreed to in a contract between the host county board and the other counties.

F. Other service providers. If funds under Minnesota Statutes, section 245.73 are to be used by a service provider other than the contracting facility in C., then:

1. 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; and

2. payments to the service provider must be based on a subcontract between the facility and the service provider. This subcontract must include an agreement by the service provider to comply with 12 MCAR SS 2.0120-2.0129. If the county board and the facility agree, payments may be made directly from the county board to the service provider.

12 MCAR S 2.0126 State and local shares.

A. Amount of grant. After approval of an application and budget, the commissioner shall award a grant equal to the lesser of 75 percent of the new program costs as defined in 12 MCAR S 2.0124 B.2.; or the new direct service costs, as defined in 12 MCAR S 2.0124 E.

B. Varying percentages of funds for more than one facility. A county board that 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 A. and if state funds are used only for new direct service costs.

C. Amounts specified for each facility. The commissioner's award shall specify the amounts awarded for each facility.

D. Other income. If the county board, the facility, or the subcontractor receives any income other than county funds as a reimbursement for costs also funded through state or local matching funds under Minnesota Statutes, section 245.73, then:

1. except as provided in 3., the commissioner shall consider this income to be applied first to the local share;

2. 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

3. if the income is from state grants under 12 MCAR S 2.014, the commissioner shall reduce the state grant under Minnesota Statutes, section 245.73. The amount of the reduction shall equal the amount by which the other state grants are paying for costs which are also funded by state or local matching funds under Minnesota Statutes, section 245.73.

12 MCAR S 2.0127 Reporting and maintenance of records.

A. Purpose. The county board, its contracting facilities, and subcontractors shall maintain records to document compliance with 12 MCAR SS 2.0120-2.0129 and with the objectives in the approved application.

B. Reporting forms. The county board shall use forms provided by the commissioner to report the use of funds under Minnesota Statutes, section 245.73, 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, Minnesota Statutes, chapter 256E. The commissioner shall use these reports and the evaluation from the county board to develop the report to the legislature required by Minnesota Statutes, section 245.73.

C. Financial records. 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.

D. Availability for audit inspection. The county board, its contracting facilities, and subcontractors shall make available for audit inspection all records required by this rule, upon request by the commissioner.

E. Minimum retention period. Unless an audit in process requires a longer retention period, the county board, its contracting facilities, and subcontractors shall use the following schedule in retaining a copy of all records required by this rule:

1. summary reports relating to the facility, at least ten years;

2. records of specific payments made and income received, at least ten years;

3. all other records, at least four years.

12 MCAR S 2.0128 Revision procedures for approved budgets and objectives.

A. Definitions. The terms "approved new program costs" and "approved objectives," as used in B.1. and C., mean those new program costs and objectives contained in an application for a grant approved by the commissioner under 12 MCAR S 2.0122 F.

B. Budget revision. After a grant award is made and as long as state funds are used for eligible expenditures under 12 MCAR SS 2.0120-2.0129, budget revisions, including transfers between approved facilities within a county, may be made under the following conditions:

1. Revisions 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. 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.

C. Revision of objectives. Approved objectives may be

revised under the following conditions:

1. When a facility becomes aware that it will not be able to attain or maintain licensure as required by 12 MCAR S 2.0122 E., it shall immediately notify the county board and the commissioner. The facility and the county board shall either:

a. immediately repay to the commissioner the remainder of the grant; or

b. obtain approval from the commissioner to meet the required objectives at a later date.

2. The commissioner shall grant the approval required under 1.b. if, in the commissioner's judgment:

a. the failure to meet the required objectives is due to circumstances beyond the control of the facility and the county board; and

b. the facility submits a realistic, time-specified plan which includes revised objectives to attain licensure under 12 MCAR S 2.036 as soon as possible, but no later than 12 months from the effective date of the grant award.

3. The facility shall request county board and commissioner's approval at least 20 days prior to:

a. a change in licensed capacity;

b. a move to another location; or

c. a major change in programming, such as a change in the target population or a shift from internal to external provision of services.

4. The facility shall consult with the commissioner prior to hiring or changing the program director, to assure compliance with the qualifications in 12 MCAR S 2.036.

5. The facility shall notify the county board and the commissioner prior to a change in ownership.

6. The facility may revise objectives other than those relating to items in C.1.-3. without the commissioner's approval, as long as the revised objectives do not conflict with 12 MCAR SS 2.0120-2.0129.

D. Delegation of county board approval. The county board may delegate its approval of budget and objective revisions if

the delegation is specified in the county board minutes.

E. Commissioner's approval. The commissioner shall not grant approval for revisions unless the revisions are consistent with 12 MCAR SS 2.0120-2.0129.

12 MCAR S 2.0129 Termination or return of a grant.

A. Funds not needed. 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, then the county board shall return the unneeded portion of the grant immediately.

B. Funds not properly used. 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 terminated upon 30 days notice to the affected county board with a copy to the affected facility. The commissioner may require repayment of any funds not used according to the approved application and budget. If the commissioner receives a written appeal from the county board within the 30-day period, opportunity for a hearing pursuant to the Administrative Procedure Act, Minnesota Statutes, chapter 14, shall be provided before the grant is terminated or is required to be repaid. The 30-day period shall begin upon the county board's receipt of the commissioner's notice sent by certified mail.

C. Use of returned funds. The commissioner may use the funds returned under A. or B. to make new awards for other applications and budgets approved under 12 MCAR S 2.0122 F.

D. Delayed payments. If the commissioner's grant award letter states that a grant payment is contingent upon compliance with specific conditions required by 12 MCAR SS 2.0120-2.0129; and if the affected county board, its contracting facilities, or subcontractors fail to meet the conditions, the commissioner may delay the grant payment until the conditions are met or until the conditions are revised through the process in 12 MCAR S 2.0128. The commissioner shall not delay the payment longer than three months unless he or she first issues a grant termination notice pursuant to B. After this notice is issued,

the commissioner may continue to delay the payment until completion of the hearing provided in B.

E. Severability. If a paragraph or clause of a rule is declared void, the paragraph or clause is severable without effect to the other paragraphs or clauses in the rule.

Eq F

APPROVED AS TO LEGALITY

March 25, 1983

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Jerry D. Adams
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 28 1983

Secretary of State

11:37 AM

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED
ADOPTION OF RULES GOVERNING GRANTS
FOR SERVICES TO ADULT MENTALLY ILL
PERSONS IN RESIDENTIAL FACILITIES
(12 MCAR 2.0120-2.0129)

ORDER ADOPTING RULE

Notice of the Commissioner's intent to adopt the above-entitled rule without a public hearing was published in the State Register on January 10, 1983, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 15.0412, subdivision 4 on January 5, 1983. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rule.

NOW, THEREFORE, IT IS ORDERED that this rule identified as 12 MCAR §§ 2.0120 - 2.0129 is adopted this 8th day of March, 1983, pursuant to authority vested in me by the Minnesota Statutes §245.73.

STATE OF MINNESOTA

Dated:

Commissioner of Public Welfare

EM-08

Department of Public Welfare
Mental Health Bureau

Notice of Intent to Solicit Outside Opinion on Proposed Rule Concerning Grants for Services to Mentally Ill Persons in Residential Facilities

Notice is hereby given that the Minnesota Department of Public Welfare is considering a draft rule, 12 MCAR § 2.012, Grants for Services to Mentally Ill Persons in Residential Facilities. This rule will replace 12 MCAR § 2.001 [Temporary].

This rule will govern grant applications, approval of applications, allocation of grants and maintenance of service and financial records. This relates to a new grant program authorized by the 1981 Legislature for mentally ill persons in residential facilities. The grants will be made to county boards to help residential facilities meet licensing standards.

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

John Zakelj
Mental Health Bureau, Department of Public Welfare
Centennial Building
St. Paul, MN 55155

Oral statements of information and comment will be received during regular business hours over thetelephone at (612) 296-4426.

All statements of information and comment must be received by March 22, 1981. Any written material received by the Department shall become part of the hearing record.

No comments received
3/14/83 J. Zakelj

Office of the Secretary of State

Notice of Vacancies in Multi-member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. **Application deadline is March 23, 1982.**

CABLE COMMUNICATIONS BOARD has 1 vacancy open immediately for a public member. The board establishes rules and standards for cable communications in the state. It approves service territories, provides consultant services, and represents the state before the Federal Communications Commission. Members are appointed by the Governor and confirmed by the Senate; members must file with the EPB and may not be employed by or have financial interest in any cable communications company or subsidiaries. No more than 4 members may be of the same political party. Meetings are monthly; members receive $35 per diem plus expenses. For specific information, contact the Cable Communications Board, 500 Rice St., St. Paul 55103 (612) 296-2545.

COUNCIL FOR THE HANDICAPPED has 4 vacancies open immediately for 3 public members and 1 service provider. Applicants must be from regions 2, 5 and 11. The council advises the Governor, Legislature, service-providing agencies and the public on the needs and potentials of people with physical, mental or emotional disabilities. Members are appointed by the Governor. Meetings are bi-monthly. Members receive $35 per diem plus expenses. For specific information, contact the Council for the Handicapped, Suite 208, Metro Square Bldg., St. Paul 55101 (612) 296-6785.

ADVISORY COUNCIL FOR THE MINNESOTA BRAILLE AND SIGHT-SAVING SCHOOL has 1 vacancy open immediately for a professional member. The council advises the Board of Education on the management of the Braille and Sight-Saving School in Faribault. Members are appointed by the Board of Education. Monthly meetings are held in the Twin Cities or Faribault; members receive $35 per diem plus expenses. For specific informatoin, contact the Advisory Council for the Minnesota Braille and Sight-Saving School, P.O. Box 308, Faribault 55021, (507) 332-3363.

INVESTMENT ADVISORY COUNCIL has 1 vacancy open immediately for a member with experience in general investment matters. The council advises the Board of Investment on policy relating to investments of state funds. Members appointed by the Board of Investment. Members must file with EPB, and receive no compensation. For specific information, contact the Investment Advisory Council, MEA Bldg., Rm. 105, 55 Sherburne Ave., St. Paul 55155; (612) 296-3328.

ETHICAL PRACTICES BOARD has 1 vacancy open immediately for term expiring in January 1985. The board administers campaign financing for state candidates; economic interest disclosure for state and metropolitan public officials; and lobbyist

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE DEPARTMENT OF PUBLIC WELFARE GOVERNING GRANTS FOR SERVICES TO ADULT MENTALLY ILL PERSONS IN RESIDENTIAL FACILITIES, 12 MCAR §2.0120 - 2.0129

ORDER FOR NOTICE OF INTENT TO ADOPT A RULE WITHOUT PUBLIC HEARING

IT IS ORDERED this 23 day of December, 1982 that a Notice of Intent to Adopt a Rule Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State Department of Public Welfare for that purpose and be published in the State Register.

STATE OF MINNESOTA

Date: 12-23-82

COMMISSIONER OF PUBLIC WELFARE

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE
MENTAL HEALTH BUREAU

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES GOVERNING GRANTS FOR SERVICES TO ADULT MENTALLY ILL PERSONS IN RESIDENTIAL FACILITIES (12 MCAR 2.012-2.0129)

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Public Welfare proposes to adopt the above-entitled rules without a public hearing. The Commissioner has determined that the proposed adoption of these rules will be non-controversial in nature and has elected to follow the procedures set forth in Minnesota Statutes Section 15.0412, Subdivision 4h.

Persons interested in these rules shall have 30 days to submit comments. The proposed rules 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.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes Section 15.0412, Subdivision 4-4g.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests by February 10, 1983 to:

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

Authority for the adoption of these rules is contained in Minnesota Statutes 245.73 (Laws of 1981, Chapter 360, Article II, Section 14). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from John Zakelj upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as proposed for adoption 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. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to John Zakelj. The adopted rules will not become effective without the Attorney General's approval and the Revisor of Statutes' certification of the rules' form.

The proposed rules 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 (DPW Rule 36).

These rules will replace 12 MCAR § 2.001 (temporary) (DPW Temporary Rule 1). A number of grants have already been made on the basis of Temporary Rule 1. In the opinion of most persons involved, the process has worked very well. Therefore, with the exception of a few sections which need clarification or updating, the permanent rules are proposed to be essentially the same as the temporary rule. A change which does not affect the content of the rules is a complete renumbering to comply with new requirements from the Revisor of Statutes.

The Department published proposed Temporary Rule 1 in the State Register on September 21, 1981 and, following the incorporation of comments, it published the adopted temporary rule on February 1, 1982. Only one letter of comment was received when the proposed temporary rule was published. No written comments have been received in response to a Notice of Intent to Solicit Outside Opinion (relating to the permanent rules) published in the State Register on March 1, 1982. (The deadline for comments and response to this latter notice was March 22, 1982.) One oral comment was received, expressing concern that the authorizing legislation allows only county boards to apply for a grant; the commenter felt the rules should remove this limitation. A response to this concern would require a change in the authorizing legislation, not the rules. This is typical of the Department's overall experience in implementing Temporary Rule 1: there are some concerns about the authorizing legislation, but the rules themselves have been non-controversial.

Fiscal Statement

Since it is optional for counties to apply for a grant under this rule, and since grants will be limited to whatever appropriation is made by the Legislature, these rules do not in themselves require the expenditure of any funds, state or local. The rules proposed here provide a process for allocating whatever funds the Governor and the Legislature decide to appropriate for the purposes of complying with the requirements of the Licensing Act (M.S. 245.781 to 245.812) and of DPW Rule 36.

If the appropriation for Rule 36 facilities for the next two state fiscal years is $10.1 million (as has been requested by the Department of Public Welfare), and if 14 counties choose to apply for those funds (as is projected in the Department's budget request), then the costs to state and local public bodies to implement the rules proposed here will be as projected below. These are the costs to develop, review and approve grant applications, monitor grant recipients, maintain records, develop evaluation reports and otherwise carry out the requirements of the proposed rules.

	July 1, 1983 to June 30, 1984	July 1, 1984 to June 30, 1985
Costs to the State:		
1.5 full-time equivalent (FTE) staff plus supporting expenses (add 5% inflation for year 2)	$45,000	$47,250
Costs to the Counties:		
.25 staff plus expenses per county x 14 counties x $30,000 per FTE (add 5% inflation for year 2)	$105,000	$110,250
Total costs to public bodies	$150,000	$157,500

These cost estimates are based on the past year's experience in implementing Temporary Rule 1. Since the proposed rules replace, and are essentially the same as, Temporary Rule 1, these costs are already included in state and county administrative budgets; no increase in costs is expected, except for inflation at a level comparable to the overall economy.

Copies of this Notice, the Statement of Need and Reasonableness and the proposed rule are available and may be obtained by contacting John Zakelj (612/296-4426).

Date: 12.23.82

ARTHUR E. NOOT
Commissioner of Public Welfare

Disk 5K- 31

Attachment

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES GOVERNING GRANTS FOR SERVICES TO ADULT MENTALLY ILL PERSONS IN RESIDENTIAL FACILITIES (12 MCAR 2.012 - 2.0129)

AFFIDAVIT OF MAILING

Wendy Johnson, being first duly sworn, deposes and says:

That on the 5th day of January, 1983, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Department of Public Welfare for the purpose of receiving notice of the proposed adoption of rules by this Department.

Wendy Johnson

Subscribed and sworn to before me

this 6 day of January, 1983.

Margaret Holt

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

H

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES GOVERNING GRANTS FOR SERVICES TO ADULT MENTALLY ILL PERSONS IN RESIDENTIAL FACILITIES (12 MCAR 2.012 - 2.0129)

AFFIDAVIT OF ADDITIONAL MAILING

Wendy Johnson, being first duly sworn, deposes and says:

That on the 5th day of January, 1983, at the City of St. Paul, County of Ramsey, State of Minnesota, in addition to serving the attached Notice of Intent to Adopt Rules Without a Public Hearing to all persons and associations who have requested that their names be placed on file for the purpose of receiving notice of the proposed adoption of rules by this Department, she also served the attached Notice by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid to the following agencies:

Community Mental Health Centers
State Hospitals
Residential Facilities for Mentally Ill Persons

Wendy Johnson

Subscribed and sworn to before me

this 6 day of January, 1983.

Margaret Holt

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

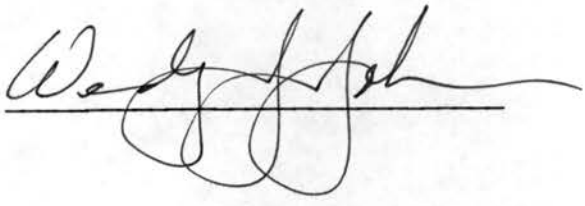
STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES GOVERNING GRANTS FOR SERVICES TO ADULT MENTALLY ILL PERSONS IN RESIDENTIAL FACILITIES (12 MCAR 2.012 - 2.0129)

CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. §15.0412, subd. 4, that their names be placed on file with and maintained by the Department of Public Welfare for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 4:00, P.M., this 5th day of January, 1983.



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 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Public Welfare
Mental Health Bureau

Proposed Rules Governing Grants for Services to Adult Mentally Ill Persons in Residential Facilities (12 MCAR §§ 2.0120-2.0129)

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State Department of Public Welfare proposes to adopt the above-entitled rules without a public hearing. The commissioner has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes § 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comments. The proposed rules 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.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes § 15.0412, subdivisions 4-4g.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests by February 10, 1983 to:

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

Authority for the adoption of these rules is contained in Minnesota Statutes § 245.73 (Laws of 1981, Chapter 360, Article II, Section 14). Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from John Zakelj upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as proposed for adoption 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. Persons who

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wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to John Zakelj. The adopted rules will not become effective without the Attorney General's approval and the Revisor of Statutes' certification of the rules' form.

The proposed rules 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 (DPW Rule 36).

These rules will replace 12 MCAR § 2.001 [Temporary] (DPW Temporary Rule 1). A number of grants have already been made on the basis of Temporary Rule 1. In the opinion of most persons involved, the process has worked very well. Therefore, with the exception of a few sections which need clarification or updating, the permanent rules are proposed to be essentially the same as the temporary rule. A change which does not affect the content of the rules is a complete renumbering to comply with new requirements from the Revisor of Statutes.

The department published proposed Temporary Rule 1 in the *State Register* on September 21, 1981 and, following the incorporation of comments, it published the adopted temporary rule on February 1, 1982. Only one letter of comment was received when the proposed temporary rule was published. No written comments have been received in response to a Notice of Intent to Solicit Outside Opinion (relating to the permanent rules) published in the *State Register* on March 1, 1982. (The deadline for comments and response to this latter notice was March 22, 1982.) One oral comment was received, expressing the concern that the authorizing legislation allows only county boards to apply for a grant; the commenter felt the rules should remove this limitation. A response to this concern would require a change in the authorizing legislation, not the rules. This is typical of the department's overall experience in implementing Temporary Rule 1: there are some concerns about the authorizing legislation, but the rules themselves have been non-controversial.

Fiscal Statement

Since it is optional for counties to apply for a grant under this rule, and since grants will be limited to whatever appropriation is made by the Legislature, these rules do not in themselves require the expenditure of any funds, state or local. The rules proposed here provide a process for allocating whatever funds the Governor and the Legislature decide to appropriate for the purposes of complying with the requirements of the Licensing Act (Minn. Stat. §§ 245.781 to 245.812) and of DPW Rule 36.

If the appropriation for Rule 36 facilities for the next two fiscal years is $10.1 million (as has been requested by the Department of Public Welfare), and *if* 14 counties choose to apply for those funds (as is projected in the department's budget request), then then the costs to state and local public bodies to implement the rules proposed here will be as projected below. These are the costs to develop, review and approve grant applications, monitor grant recipients, maintain records, develop evaluation reports and otherwise carry out the requirements of the proposed rules.

	July 1, 1983 to June 30, 1984	July 1, 1984 to June 30, 1985
Costs to the State:		
1.5 full-time equivalent (FTE) staff plus supporting expenses (add 5% inflation for year 2)	$ 45,000	$ 47,200
Costs to the Counties:		
.25 staff plus expenses per county × 14 counties × $30,000 per FTE (add 5% inflation for year 2)	$105,000	$110,200
Total costs to public bodies	$150,000	$157,400

These cost estimates are based on the past year's experience in implementing Temporary Rule 1. Since the proposed rules replace, and are essentially the same as, Temporary Rule 1, these costs are already included in state and county administrative budgets; no increase in costs is expected, except for inflation at a level comparable to the overall economy.

Copies of this notice, the statement of need and reasonableness and the proposed rule are available and may be obtained by contacting John Zakelj (612/296-4426).

December 23, 1982

Arthur E. Noot
Commissioner of Public Welfare

Rule as Proposed (all new material)

12 MCAR § 2.0120 Scope.

Rules 12 MCAR §§ 2.0120-2.0129 apply to county boards that apply individually or jointly to the Commissioner of Public Welfare for a grant under Minnesota Statutes, section 245.73. These grants are for eligible expenditures to be incurred by the county, by an eligible residential facility with which the county board contracts, or by a public or private organization or a combination of public and private organizations with which the eligible residential facility contracts.

12 MCAR § 2.0121 Definitions.

A. Scope. The terms used in 12 MCAR §§ 2.0122-2.0129 have the meanings given them in B.-E.

B. Adult. "Adult" means a person who is 18 years old or older.

C. Commissioner. "Commissioner" means the Commissioner of Public Welfare or a designated representative.

D. County Board. "County board" means the county board of commissioners or a designated representative.

E. Mentally ill person. "Mentally ill person" means a person who has been diagnosed by a physician, a licensed psychologist, or a licensed consulting psychologist as having a condition:

1. 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

2. which is listed in the code range 290, 293-302.9 or 306-314.9 of the International Classification of Diseases, (ICD-9-CM) issued by the National Center for Health Statistics (Ann Arbor, Michigan: Edwards Brothers, 1978) or in the corresponding code on Axes, I, II, or III in the Diagnostic and Statistical Manual of Mental Disorders, (DSM-III) issued by the American Psychiatric Association (Washington, D.C., 1980).

12 MCAR § 2.0122 Allocation of grants.

A. Deadlines for applications. The commissioner shall set the deadlines for grant applications made under Minnesota Statutes, section 245.73. the commissioner shall inform county boards of the deadlines. If the commissioner establishes more than one review cycle, the term "deadline for applications" as used in B.3.-5. shall mean the deadline for the cycle in which application is made.

B. Priorities. In response to applications and budgets that meet the requirements of 12 MCAR § 2.0123 and 12 MCAR § 2.0124, 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 order of descending priorities:

1. facilities previously funded under Minnesota Statutes, section 245.73, unless otherwise indicated by law;

2. facilities operating on July 1, 1980;

3. facilities operating at the deadline for applications;

4. new facilities opening after the deadline for applications and planning to provide a Category I program, as defined in 12 MCAR § 2.036;

5. new facilities opening after the deadline for applications and planning to provide a Category II program, as defined in 12 MCAR § 2.036.

C. First consideration. In each priority, for the biennium ending June 30, 1983, 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.

D. More than one facility in a priority. If two or more eligible facilities fall within the same priority and if the appropriation is not sufficient to fund all facilities within that 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.

E. Eligible facilities. The commissioner shall limit grants to facilities that can show that they will:

1. submit a completed application for a license under 12 MCAR § 2.036 within three months of the effective date of the grant award;

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2. attain at least a provisional license under 12 MCAR § 2.036 within six months of the effective date of the grant award; and

3. maintain the license for the remainder of the grant period.

F. Approval of applications and budgets. The commissioner shall base his or her approval of applications and budgets on the applications' and budgets' compliance with Minnesota Statutes, section 245.73 and 12 MCAR §§ 2.0120-2.0129 and on the availability of funds within the allocation priorities in B.-D.

G. Compliance with other rules and laws. 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 Minnesota Statutes, section 245.73.

12 MCAR § 2.0123 Application criteria.

In order to qualify for a grant under Minnesota Statutes, section 245.73, the county board shall submit to the commissioner six completed copies of the application and budget. The county board shall complete a separately identifiable application for each facility for which a grant is requested. The application must at least:

A. describe the persons to be served under the grant;

B. state the measureable time-specified objectives to be accomplished with the grant (these objectives must comply with 12 MCAR § 2.0122 E.);

C. explain how the requirements of 12 MCAR § 2.036 will be complied with;

D. explain how the proposed services will fit into the local continuum of care;

E. name the proposed sites and providers to be used;

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

G. explain how the county board will determine the effectiveness of the services in helping adult mentally ill persons remain and function in their own communities; and

H. briefly describe the evaluation results to date for facilities previously funded under Minnesota Statutes, section 245.73.

12 MCAR § 2.0124 Budgets.

A. Income and expenditures. A budget must accompany each application for a grant under Minnesota Statutes, section 245.73 and must be 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 in the budget for the current period or for any other budget periods.

B. Separate expenditures categories. Each budget must separate expenditures according to the following categories, as further defined in C.-F.:

1. room and board and previously funded program costs;

2. new program costs separated into new direct service costs and other new program costs; and

3. other costs including program costs for residents who are not adult, not mentally ill, or not Minnesota residents as defined by Minnesota Statutes, section 256E.08, subdivision 7.

C. Room and board costs. Room and board costs must include the following costs:

1. all directly identifiable costs of normal and special diet food preparation and service;

2. all directly identifiable costs of linen, bedding, laundering, and laundry supplies;

3. all directly identifiable costs of housekeeping, including cleaning and lavatory supplies;

4. 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; and

5. a reasonable allocation of salaries and other costs related to 1.-4.

However, costs in 1.-5. which are new since June 1, 1981 and which are required by 12 MCAR § 2.036 are other new program costs and are not room and board costs.

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

E. New direct service costs. Within the limits in 12 MCAR § 2.0126 A., new direct service costs are the only costs which may be paid with state funds under Minnesota Statutes, section 245.73. 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:

1. salaries and related expenses including payroll taxes, health insurance, retirement contributions, telephone, personal liability insurance, postage, recruitment, staff training, and in-state travel of personnel providing services directly to adult mentally ill residents. Support personnel are included to the extent they perform client related duties such as client record keeping, individual program planning, and on-site program supervision;

2. consumable supplies used by the personnel described in 1. in performing client related duties and by clients in carrying out program activities; and

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

F. Other new program costs. Other new program costs must include all new program costs other than those already included in new direct service costs. These costs muct include, but not be limited to, the costs of renovation, construction or rent of buildings, and purchase or lease of vehicles or equipment, if these costs are new since June 1, 1981, and are required by 12 MCAR § 2.036. These costs may be paid for with local matching funds, but may not be paid for with state funds provided under Minnesota Statutes, section 245.73.

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

H. Elimination or reduction in funds by state or federal government. 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. 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.

I. Limits on dollar amounts for items. The dollar amounts for the various items included in the budget must not exceed the prevailing cost of like items in the local county and the costs that prudent and cost-conscious management would pay for a given item or service.

J. Time frame for budget. The budget shall relate to a time period set by the county board within the time limits set by the appropriation.

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

12 MCAR § 2.0125 Lines of accountability and flow of funds.

A. Payments to the county board. The county board shall be the primary local entity responsible to the commissioner for use of all funds paid to it under Minnesota Statutes, section 245.73. The commissioner shalfl pay funds under Minnesota Statutes, section 245.73 solely to county boards submitting an application and budget approved under 12 MCAR § 2.0122 E. 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. If actual expenditures by the county, its contracting facilities, and subcontractors are less than provided in the approved budget, the commissioner shall reduce the quarterly payments so that the grant remains within the limits in 12 MCAR § 2.0126 A.

B. Local review of applications. If a county board elects to apply for a grant under Minnesota Statutes, section 245.73, then before submission of the application and budget to the commissioner, the county board shall determine which facilities shall be included in the application and budget, and shall review and approve the completed application and budget.

C. Payment to the residential facility. 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 12 MCAR §§ 2.0120-2.0129 are complied

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with, the county board shall, except as provided in F.2., 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.

D. County board and facility contract. The contract between the county board and the facility must specify how the county board will monitor the facility's compliance with 12 MCAR §§ 2.0120-2.0129 and how the county board and the facility will monitor the subcontractors' compliance with 12 MCAR §§ 2.0120-2.0129.

E. Joint applications for a grant. If two or more county boards apply jointly for a grant, they shall designate a host county board that will carry out the responsibilities in A., C., and D. The assignment of these responsibilities must be agreed to in a contract between the host county board and the other counties.

F. Other service providers. If funds under Minnesota Statutes, section 245.73 are to be used by a service provider other than the contracting facility in C., then:

1. 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; and

2. payments to the service provider must be based on a subcontract between the facility and the service provider. This subcontract must include an agreement by the service provider to comply with 12 MCAR §§ 2.0120-2.0129. If the county board and the facility agree, payments may be made directly from the county board to the service provider.

12 MCAR § 2.0126 State and local shares.

A. Amount of grant. After approval of an application and budget, the commissioner shall award a grant equal to the lesser of 75 percent of the new program costs as defined in 12 MCAR § 2.0124 B.2.; or the new direct service costs, as defined in 12 MCAR § 2.0124 E.

B. Varying percentages of funds for more than one facility. A county board that 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 A. and if state funds are used only for new direct service costs.

C. Amounts specified for each facility. The commissioner's award shall specify the amounts awarded for each facility.

D. Other income. If the county board, the facility, or the subcontractor receives any income other than county funds as a reimbursement for costs also funded through state or local matching funds under Minnesota Statutes, section 245.73, then:

1. except as provided in 3., the commissioner shall consider this income to be applied first to the local share;

2. 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

3. if the income is from state grants under 12 MCAR § 2.014, the commissioner shall reduce the state grant under Minnesota Statutes, section 245.73. The amount of the reduction shall equal the amount by which the other state grants are paying for costs which are also funded by state or local matching funds under Minnesota Statutes, section 245.73.

12 MCAR § 2.0127 Reporting and maintenance of records.

A. Purpose. The county board, its contracting facilities, and subcontractors shall maintain records to document compliance with 12 MCAR §§ 2.0120-2.0129 and with the objectives in the approved application.

B. Reporting forms. The county board shall use forms provided by the commissioner to report the use of funds under Minnesota Statutes, section 245.73, 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, Minnesota Statutes, chapter 256E. The commissioner shall use these reports and the evaluation from the county board to develop the report to the legislature required by Minnesota Statutes, section 245.73.

C. Financial records. 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.

D. Availability for audit inspection. The county board, its contracting facilities, and subcontractors shall make available for audit inspection all records required by this rule, upon request by the commissioner.

E. Minimum retention period. Unless an audit in process requires a longer retention period, the county board, its contracting facilities, and subcontractors shall use the following schedule in retaining a copy of all records required by this rule:

1. summary reports relating to the facility, at least ten years;

2. records of specific payments made and income received, at least ten years;

3. all other records, at least four years.

12 MCAR § 2.0128 Revision procedures for approved budgets and objectives.

A. Definitions. The terms "approved new program costs" and "approved objectives," as used in B.1. and C., mean those new program costs and objectives contained in an application for a grant approved by the commissioner under 12 MCAR § 2.0122 F.

B. Budget revision. After a grant award is made and as long as state funds are used for eligible expenditures under 12 MCAR §§ 2.0120-2.0129, budget revisions, including transfers between approved facilities within a county, may be made under the following conditions:

1. Revisions 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. 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.

C. Revision of objectives. Approved objectives may be revised under the following conditions:

1. When a facility becomes aware that it will not be able to attain or maintain licensure as required by 12 MCAR § 2.0122 E., it shall immediately notify the county board and the commissioner. The facility and the county board shall either:

a. immediately repay to the commissioner the remainder of the grant; or

b. obtain approval from the commissioner to meet the required objectives at a later date.

2. The commissioner shall grant the approval required under 1.b. if, in the commissioner's judgment:

a. the failure to meet the required objectives is due to circumstances beyond the control of the facility and the county board; and

b. the facility submits a realistic, time-specified plan which includes revised objectives to attain licensure under 12 MCAR § 2.036 as soon as possible, but no later than 12 months from the effective date of the grant award.

3. The facility shall request county board and commissioner's approval at least 20 days prior to:

a. a change in licensed capacity;

b. a move to another location; or

c. a major change in programming, such as a change in the target population or a shift from internal to external provision of services.

4. The facility shall consult with the commissioner prior to hiring or changing the program director, to assure compliance with the qualifications in 12 MCAR § 2.036.

5. The facility shall notify the county board and the commissioner prior to a change in ownership.

6. The facility may revise objectives other than those relating to items in C.1.-3. without the commissioner's approval, as long as the revised objectives do not conflict with 12 MCAR §§ 2.0120-2.0129.

D. Delegation of county board approval. The county board may delegate its approval of budget and objective revisions if the delegation is specified in the county board minutes.

E. Commissioner's approval. The commissioner shall not grant approval for revisions unless the revisions are consistent with 12 MCAR §§ 2.0120-2.0129.

12 MCAR § 2.0129 Termination or return of a grant.

A. Funds not needed. 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, then the county board shall return the unneeded portion of the grant immediately.

B. Funds not properly used. 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 terminated upon 30 days notice to the affected county board with a copy to the affected facility. The commissioner may require repayment of any funds not used according to the approved application and budget. Opportunity for a hearing pursuant to the Administrative Procedure Act, Minnesota Statutes, chapter 14, shall be provided before the grant is terminated or is required to be repaid.

C. Use of returned funds. The commissioner may use the funds returned under A. or B. to make new awards for other applications and budgets approved under 12 MCAR § 2.0122 F.

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES GOVERNING GRANTS FOR SERVICES TO ADULT MENTALLY ILL PERSONS IN RESIDENTIAL FACILITIES (12 MCAR §§ 2.0120-2.0129)

FINDINGS OF FACT AND CONCLUSIONS

Notice of the Commissioner's intent to adopt the above-entitled rule without a public hearing was published in the State Register on January 10, 1983, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 15.0412, subdivision 4 on January 5, 1983. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rule, I find the following:

Only one letter of comment has been received regarding the proposed rules. In addition, three phone calls were received requesting clarification of certain sections, but generally supporting the rules as proposed. As a result of the letter and phone calls, the Department has prepared the following amendments:

12 MCAR § 2.0129.B:

B. Funds not properly used. 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 terminated upon 30 days notice to the affected county board with a copy to the affected facility. The commissioner may require repayment of any funds not used according to the approved application and budget. If the commissioner receives a written appeal from the county board within the 30-day period, opportunity for a hearing pursuant to the Administrative Procedure Act, Minnesota Statutes, chapter 14, shall be provided before the grant is terminated or is required to be repaid. The 30-day period shall begin upon the county board's receipt of the commissioner's notice by certified mail.

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This amendment specifies the procedure to be used to obtain a hearing, i.e., a written appeal from the county board. In addition, it defines the 30-day period within which a hearing can be requested; and it provides some extra protection to the county board by specifying that certified mail is to be used for the commissioner's notice. These requirements are similar to the procedures provided in M.S. 245.801 for appeal of a denial of license. These amendments are necessary to logically implement the rule as originally proposed. No substantial change is involved.

Two new sections are proposed, numbered as 12 MCAR § 2.0129 D. and E:

D. Delayed payments. If the commissioner's grant award letter states that a grant payment will be contingent upon compliance with specific conditions required by 12 MCAR § 2.0120-2.0129; and if the affected county board, its contracting facilities or subcontractors fail to meet the conditions, the commissioner may delay the grant payment until the conditions are met or until the conditions are revised through the process in 12 MCAR § 2.0128. The commissioner shall not delay the payment longer than three months unless he or she first issues a grant termination notice pursuant to B. After this notice is issued, the commissioner may continue to delay the payment until completion of the hearing provided in B.

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E. Severability. If a paragraph or clause of a rule is declared void, the paragraph or clause is severable without effect to the other paragraghs or clauses in the rule.

These sections respond to the only letter of comment received. In that letter, the Mental Health Association of Minnesota states that the proposed rule should include specific procedures for the Department to defer, or delay, payments under certain conditions. In fact, during the past year, the Department has already administratively adopted and used similar procedures while implementing the proposed rules' predecessor, Temporary Rule 1 (12 MCAR § 2.001 - Temporary). As is the case with the proposed rules, Temporary Rule 1 provided a procedure to terminate a grant, but was silent as far as deferral of payments. In making grant awards for 68 facilities under Temporary Rule 1, the Department administratively decided to specify deferral of payment conditions in all grant award letters. In most cases, these conditions related to the requirement in Temporary Rule 1 (and now included as 12 MCAR § 2.0122 E.) requiring facilities to attain licensure within six months of the grant award.

On the basis of the conditions stated in the grant award letters, the Department has, during the past year, delayed five grant payments for periods ranging from one week to three months. These payment delays have been very effective as far as increasing efforts by grantees to come into compliance with legal requirements. In many cases, before payment delays became necessary, the Department, the affected county and the facility have worked out a revised schedule within which requirements could realistically be attained. The Department has not yet found it necessary to terminate any grants or to request that funds be repaid.

The proposed new 12 MCAR § 2.0129 D. accurately reflects the generally accepted current practice. It spells out the procedures, with specific safeguards for the grantee: payment delays may only be based on specific conditions which the county has already received notice of in the award letter; and the delay cannot exceed three months unless another notice (the grant termination notice) is sent. The amendment is also in the public interest, since it provides additional assurance that public funds will be used as intended by the Legislature.

Proposed new 12 MCAR § 2.0129 D. addresses an area which the originally proposed rules did not cover. This new section fits in well with the earlier proposal and does not constitute a substantial change.

Proposed new 12 MCAR § 2.0129 E. is added in the event that the other proposals above are ruled to be invalid. In case this occurs, the intention is that the rules be implemented as they were originally proposed.

Other than the amendments above (which do not constitute substantial change) the rules as adopted are identical to the rules as they were proposed in the State Register on January 10, 1983. These rules will be submitted to the Attorney General and to the Revisor of Statutes for review as required by M.S. 15.0412, Subd. 4h.

Now, therefore, it is ordered that, in light of the fact that the need for and reasonableness of these rules have been demonstrated, the proposed rules, as amended, identified as DPW Rule 12 (12 MCAR § 2.0120-2.0129), Grants for Services to Adult Mentally Ill Persons in Residential Facilities, are hereby adopted and shall become effective within the time and procedures provided by M.S. 15.0412, Subd. 4h.

Dated: 3/8/83

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

Leonard W. Levine
Commissioner

EM-04

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rule 12 Governing Grants for Services to Adult Mentally Ill Persons in Residential Facilities (12 MCAR §2.0120-2.0129)

STATEMENT OF NEED AND REASONABLENESS

Statutory Authority

Rule 12 (12 MCAR §§2.0120-2.0129) has been developed in response to the specific legislative directive contained in M.S. 245.73 (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 rule replaces DPW Temporary Rule 1 and continues the implementation of the new grant program established by M.S. 245.73 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, 1982, this figure had dropped to 1,349; less than 16% 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 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. Rule 12 will enable these new funds and any additional funds appropriated in the future to be granted to county boards so that residential facilities will now be able to comply with licensing standards.

In 1981, Temporary Rule 1 was 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.

Temporary Rule 1 provided the basis for the first grants made under this new program. The process under Temporary Rule 1 has worked very well. Therefore, with the exception of a few sections which need clarification or updating, the Department is proposing that Rule 12 be essentially the same as Temporary Rule 1. Changes from Temporary Rule 1 are identified in the discussion below.

Need and Reasonableness - Section by Section

Section 2.0120 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 2.0121.B., 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 2.0121.C.-D., 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 2.0121.E., the definition of mentally ill person is the same as the definition used in the revised DPW Rule 36. This allows 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 2.0122.A., provides for deadlines for applications to be set by the Commissioner. This is reasonable and necessary to ensure an orderly and workable grant review process.

Section 2.0122.B., incorporates the statutory priority for facilities operating on July 1, 1980 (M.S. 245.73, 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 2.0122.B.1., was not included in Temporary Rule 1 because Temporary Rule 1 only covered the first grants under this new program. This section is proposed for Rule 12 to reflect the fact that the Department plans to request Legislative approval to give first priority to facilities previously funded under this rule. The phrase "unless otherwise indicated by law" recognizes that the current legislation does give first priority to facilities operating as of July 1, 1980. Although the latter is a very reasonable first priority for this program's first biennium, it is not reasonable for future years. If there are sufficient funds in this biennium to develop a program at a lower priority facility, it would not make sense to close that program in future years simply because a county finally decided to apply for another facility which had been operating as of July 1, 1980. If the Legislature agrees with this view, to include 2.0122.B.1. at this time will allow implementation of such a legislative amendment without first requiring amendment of Rule 12.

Section 2.0122.C., 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 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. The phrase "for the biennium ending June 30, 1983" is an addition to Temporary Rule 1. Since there have been other state institutions closed in the past and there may be more in the future, there would be no point in providing permanent special consideration just for the Rochester area.

Section 2.0122.D., recognizes that, even with the priorities laid out in 2.0122.B., 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 2.0122.D. 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 2.0122.E., 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. In Temporary Rule 1, this section also included a provision for unforeseeable circumstances. That concept is now included, in expanded form, in Section 2.0128.C.

Section 2.0122.F. 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 2.0122.F. 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 2.0122.G. refers to applicable laws and rules other than M.S. 245.73, Rule 12 and Rule 36. This is necessary to assure that grants will only go to law-abiding recipients.

Section 2.0123 describes the criteria for applications to be considered for funding. The requirement for applications to be separate for each facility is comparable to the requirements of Rule 36 and the Licensing Act. This is necessary to carry out the basic intent of these funds, i.e., to assure licensure.

Sections 2.0123.A.-F. specify the detail needed by state reviewers to determine whether the applicant will use a grant for the purposes required by M.S. 245.73, and whether the applicant will do so in a cost-effective manner. The amount of detail required is reasonable in relation to the average size of each grant - about $40,000 - $70,000 per year.

Section 2.0123.B. implements the basic purpose of the appropriation by requiring that objectives under the grant relate to Section 2.0122.E. (see narrative above regarding 2.0122.E.).

Section 2.0123.G. requires that the evaluation provisions in M.S. 245.73, Subdivision 4, be implemented at the local level. (Section 2.0127.B. of this rule requires 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 2.0123.H. is an addition to Temporary Rule 1 to recognize the fact that the permanent rule will also cover facilities previously funded under this rule. If there are problems with a facility's previous grant, it is reasonable to address those problems before awarding another grant.

Section 2.0124.A. defines what must be included in the budget which is required by M.S. 245.73. It specifies that the budget must represent <u>cash</u> 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 M.S. 245.73, Subdivision 3, was intended to mean cash transactions in the manner provided in 2.0124.A.

The requirement in 2.0124.A. 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 2.0124.B.-F. 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 2.0124.B.), the body of the rule is a more appropriate place for these definitions, rather than the definition Section 2.0121.

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 M.S. 245.73, 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.

A minor change from Temporary Rule 1 is the combination of the budget categories "room and board" and "previously funded program costs" into one budget category, 2.0124.B.1. Experience with Temporary Rule 1 has shown that often the difference between these two categories is difficult to determine and is not essential to the grant review process. Allowing these two types of costs to be considered as one budget category will simplify the budget process.

In 2.0124.E.-F., the differentiation is made between direct service and other program costs. This is necessary to implement the requirement in M.S. 245.73, Subdivision 2. that the state funds be used for direct service costs only. Section 2.0124.E. 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 2.0124 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. With the requirement for the entire budget to be shown and the additional requirement to provide an explanation for the allocation of indirect costs (2.0124.G.), 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.

The last sentence of Section 2.0124.F. is an addition to Temporary Rule 1. This sentence does not change or add any requirements, but simply clarifies that the budget category "other new program costs" is the same as the "other costs" referred to in M.S. 245.73, Subdivision 2. Experience with Temporary Rule 1 has shown that persons have difficulty relating this budget category to what is indicated in the law as state vs. locally reimburseable items.

Section 2.0124.H. implements the exception provided for in M.S. 245.73, 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 2.0124.I. 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 2.0124.J. provides for county board flexibility as far as a starting and ending date for the grant applied for, as long as the dates are within the time period provided in the appropriation. 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. In other cases, this will enable a county to request a grant for less than a full fiscal year; this may be necessary for new programs which will not be ready to start at the beginning of a state fiscal year.

Section 2.0124.K. 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 2.0125 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 2.0125 insures that lines of accountability will be maintained.

M.S. 245.73 clearly places the county board in the central position at the local level for implementation of this program. Section 2.0125 especially 2.0125.B., clarifies and defines this central position. This is necessary in order for residential facilities to understand and cooperate with county requirements as part of this grant program. It is also reasonable, given the policy decision of the Legislature in passing the Community Social Services Act, to give county boards the authority and responsibility for local decisions regarding service priorities.

Section 2.0125.c. is necessary to insure that funds will be used only for residential facilities, as required by the authorizing legislation. The exception under 2.0125.F.2. 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, 2.0125.F. 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 2.0126.A. combines the two statutory requirements that: 1) state funds be used for direct service costs only (M.S. 245.73, 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 2.0126.A. 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 reasonable and legally correct under M.S. 645.26, Subdivision 1, which calls for particular provisions to prevail over conflicting general provisions.

Another possible situation under 2.0126.A. would be the case where the grant equals 75% of the total county costs, but is less than the direct service costs. 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 2.0126.B. relates back to the 2.0124.A. requirement for separate budgets for each facility. 2.0126.B. 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. Section 2.0126.B. 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 M.S. 245.73, Subdivision 3, which relates the 75% to "the county's cost", not each facility's cost.

Section 2.0126.D. 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 2.0126.D.1.-2. insures that counties and facilities will not receive double payment from this grant and from fees for the same expenses. Section 2.0126.D.3. does the same thing in relation to grants received under DPW Rule 14, and also insures that these other state grants will not be used as the local matching funds required under this rule. Although grants under Rule 14 are sometimes used for the same purposes as will the grants under Rule 12, it was not the intention of the Legislature that these different grants be combined to pay for the entire cost of the program. Temporary Rule 1 had also included Rule 22 in this section; reference to Rule 22 is no longer necessary since that program expired on December 31, 1982.

Section 2.0127 defines the record-keeping and reporting requirements required by M.S. 245.73, Subdivision 4 so that the intended level of accountability is assured, but in the least burdensome manner possible.

Section 2.0127.D. makes explicit a requirement which was only applied in Temporary Rule 1. It is necessary to clarify the Commissioner's authority to inspect all records for audit purposes. This requirement is reasonable since it is records related to use of public funds which are involved.

Section 2.0127E. is an addition to Temporary Rule 1 to clarify how long records must be kept. This is necessary to ensure that records will be available for audit. The time periods are based on similar requirements for county social service programs, as specified in DPW Administrative Manual 357.50. The time periods strike a reasonable balance between the public's need for audit availability and the grantee's expenses in storing the records.

Section 2.0128 specifies the conditions under which revisions of approved budgets and objectives may be made. It recognizes that approved budgets and objectives may have to be modified in the light of actual experience, a provision that is both necessary and reasonable.

Section 2.0128.A. defines "approved" in terms of the application and budget approved by the Commissioner. Without this, there could be some confusion as to whether "approved" meant county approval; this makes it clear that the entire Section 2.0128 relates back to the application and budget approved under Section 2.0122.F.

Sections 2.0128.B.-C. define which types of revisions need both state and county approval, which can be done with county approval only, and which the facility can do without approval. This ensures state level review of any revisions which significantly affect grant objectives; at the same time, it frees counties and facilities of the burden of a higher level review process for any revisions which are not major.

Most of Section 2.0128.C. was not in Temporary Rule 1. Temporary Rule 1 did include a provision allowing grant applicants to qualify objectives for "unforeseeable circumstances". However, Temporary Rule 1 provided no criteria for the Department to use in approving requests to revise objectives when those unforeseeable circumstances did come up. This section spells out the informal criteria which the Department has found necessary and reasonable to implement M.S. 245.73.

Section 2.0128.D. allows the county board to delegate approval of budget and objective revisions. This ensures accountability, but also allows each county board to implement the rule in the manner which is best suited to its particular administrative structure. In order to prevent any confusion as to who is authorized to make these approvals, the rule requires the county board to document its decision.

Section 2.0128.E. ensures that Commissioner's approvals of revisions are consistent with the rest of Rule 12.

Section 2.0129.A. and C. allow 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 2.0129.B. 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 terminated upon reasonable (30 days) notice, with full appeal provisions. The authority for this can be found in M.S. 245.73, 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 2.0129.B. provides for a specific form of corrective action to be available to the Commissioner to use.

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JULY, 1981

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Minneapolis, MN 55415
348-8010

BM/aau

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED
ADOPTION OF RULES GOVERNING GRANTS
FOR SERVICES TO ADULT MENTALLY ILL
PERSONS IN RESIDENTIAL FACILITIES
(12 MCAR 2.0120-2.0129)

STATEMENT OF COMPLIANCE
WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General Ruth Mickelson, 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.

STATE OF MINNESOTA

Dated: March 3, 1983

Ruth Mickelson
Special Assistant Attorney General

EM-09

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STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES GOVERNING GRANTS FOR SERVICES TO ADULT MENTALLY ILL PERSONS IN RESIDENTIAL FACILITIES (12 MCAR 2.0120-2.0129)

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

John M. Zakelj, being first duly sworn, deposes and says:

That no requests were received to notify any persons or organizations when the above-entitled matter is submitted to the Attorney General.

John M. Zakelj

Subscribed and sworn to before me this 1 day of March, 1983.

Margaret Holt

EM-07

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