

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

DEPARTMENT: Office of the Attorney General **STATE OF MINNESOTA**

OFFICE MEMORANDUM

DATE: December 20, 1991

TO: ELEANOR WEBER
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul

FROM: MARY JO MURRAY
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-3258

SUBJECT: In the Matter of the Adopted Rule Relating to Professional Home-Based Mental Health Services

The above-referenced rule has been approved as to its legality by the Attorney General on December 19, 1991.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

MJM:sc
Enclosures
cc: Deborah Huskins
William Brown, Chief Judge
MaryAnn Hruby

Department of Human Services

Adopted Emergency Amendments to Permanent Rules and Emergency Rules Relating to Professional Home-Based Mental Health Services

Rules as Adopted

9505.0175 DEFINITIONS.

[For text of subps 1 to 42, see M.R.]

Subp. 43. **Residence.** "Residence" means the place a person uses as a primary dwelling place, and intends to continue to use indefinitely for that purpose. Residence is not a group home as defined by part 9560.0520, subpart 4, a residential treatment facility licensed under parts 9549.0900 to 9545.1090, an acute care hospital licensed under Minnesota Statutes, chapter 144, a regional treatment center or other institutional group setting, or a foster family home in which~~:~~

~~A.--the-child-is-being-provided-therapeutic-support-of foster-care-as-defined-in-Minnesota-Statutes,-section-245.4871, subdivision-34;-or~~

~~B.~~ the foster parent is not the primary caregiver and does not reside with the child.

[For text of subps 44 to 50, see M.R.]

9505.0324 [Emergency] HOME-BASED MENTAL HEALTH SERVICES.

Subpart 1. **Definitions.** The terms used in this part have the meanings given them in items A to E.

A. "Child" means a person under age 21 who is eligible for early periodic screening, diagnostic, and treatment services under parts 9505.1693 to 9505.1748 and who has been determined to be in need of home-based mental health services.

B. "Child with severe emotional disturbance" refers to the term defined in Minnesota Statutes, section 245.4871, subdivision 6, and, in addition, to a person at least age 18 but under age 21 who has serious and persistent mental illness as defined in Minnesota Statutes, section 245.462, subdivision 20.

C. "Emotional disturbance" refers to the term defined

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in Minnesota Statutes, section 245.4871, subdivision 15, and, in addition, to a person at least age 18 but under age 21 who has a mental illness as defined in Minnesota Statutes, section 245.462, subdivision 20.

D. "Home-based mental health services" means a culturally appropriate, structured program of intensive mental health services provided to a child with severe emotional disturbance who is at risk of out-of-home placement because of an event or condition which exacerbates the child's severe emotional disturbance or who is returning from out-of-home placement because of the severe emotional disturbance. The services are for the purposes of resolving an acute episode of emotional disturbance affecting the child with the severe emotional disturbance or the child's family, reducing the risk of the child's out-of-home placement, or reunifying and reintegrating the child into the child's family after an out-of-home placement. The services are provided primarily in the child's residence but may also be provided in the child's school, the home of a relative of the child, a recreational or leisure setting, or the site where the child receives day care. For purposes of this part, home-based mental health services is used as a synonym for "professional home-based family treatment" in Minnesota Statutes, section 245.4871, subdivision 31.

E. "Individual treatment plan" has the meaning given in Minnesota Statutes, section 245.4871, subdivision 21.

Subp. 2. **Eligible providers of home-based mental health services.** The entities in items A to F are eligible to provide home-based mental health services:

A. outpatient hospitals licensed under Minnesota Statutes, section 144.50;

B. community mental health centers providing community mental health center services as specified in part 9505.0260;

C. an entity approved by the commissioner as specified in parts 9520.0750 to 9520.0870;

D. physician directed clinics as defined in part

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by Revisor _____

9505.0345, subpart 1, item A;

E. community health clinics under part 9505.0255; and

F. an entity operated by or under contract to the county to provide home-based mental health services.

Subp. 3. **Eligibility to receive home-based mental health services.** Home-based mental health services are available to a child who has been referred for home-based mental health services as a child with severe emotional disturbance who needs home-based mental health services. For purposes of the determination of a child's eligibility to receive home-based mental health services under this part, a diagnostic assessment as defined in Minnesota Statutes, section 245.4871, subdivision 11, in the case of a child under age 18 or a diagnostic assessment as defined in Minnesota Statutes, section 245.462, subdivision 9, in the case of a child at least age 18 but under age 21 is a screening under parts 9505.1693 to 9505.1748.

Subp. 4. **Eligibility for medical assistance payment.** To be eligible for medical assistance payment, the provider of home-based mental health services must meet the requirements in items A to E. The home-based mental health service provider must assist the case manager, if any, in coordinating other services to the child.

A. The services must be provided by mental health professionals and mental health practitioners who are skilled in the delivery of mental health services to children and their families.

B. The services must be designed to meet the specific mental health needs of the child and the child's family according to the child's individual treatment plan that is developed by the provider and that specifies the treatment goals and objectives for the child and the child's family.

C. The provider must provide, or assist the child or the child's family in arranging, crisis services for the child and the family of a child which must be available 24 hours per day, seven days a week.

D. The caseload of a home-based mental health service

Approved
by Revisor _____

provider must be of a size that can reasonably be expected to enable the provider to meet the needs of the children and their families in the provider's caseload and permit the delivery of the services specified in the children's individual treatment plans.

E. The services must be coordinated with the child's case manager for mental health services if the child is receiving case management services.

Subp. 5. **Components of home-based mental health services.** A provider of home-based mental health services specified in subpart 2 must be capable of providing all of the components specified in this subpart. However, a provider is responsible to provide a component only if the component is specified in a child's individual treatment plan. The components are:

A. diagnostic assessment as specified in part 9505.0323;

B. individual psychotherapy, family psychotherapy, and multiple-family group psychotherapy as defined in part 9505.0323; and

C. individual, family, or group skills training that is designed to improve the basic functioning of the child with severe emotional disturbance and the child's family in the activities of daily and community living, and to improve the social functioning of the child and the child's family in areas important to the child's maintaining or reestablishing residency in the community. For purposes of this item, "community" means the child's residence, work, school, or peer group. The individual, family, and group skills training must:

(1) consist of activities designed to promote skill development of both the child with severe emotional disturbance and the child's family in the use of age-appropriate daily living skills, interpersonal and family relationships, and leisure and recreational services;

(2) consist of activities which will assist the family to improve its understanding of normal child development and to use parenting skills that will help the child with severe

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emotional disturbance achieve the goals outlined in the child's individual treatment plan; and

(3) promote family preservation and unification, community integration, and reduced use of unnecessary out-of-home placement or institutionalization of children with severe emotional disturbance.

Subp. 6. **Excluded services.** The services specified in items A to L are not eligible for medical assistance payment.

A. Home-based mental health services provided to a child who at the time of service provision has not been determined to be a child with severe emotional disturbance except for the first 30 hours of home-based mental health services provided to a child who is later determined to have a severe emotional disturbance.

B. More than 192 hours of individual, family, or group skills training within a six-month period.

C. More than a combined total of 48 hours within a six-month period of individual psychotherapy and family psychotherapy and multiple-family group psychotherapy except in an emergency and prior authorization or after-the-fact authorization of the psychotherapy is obtained under part 9505.5015.

D. More than 240 hours of a combination of any of the psychotherapies and individual, family, or group skills training within a six-month period.

E. Home-based mental health services that exceed 240 hours in any combination of the psychotherapies and individual, family, or group skills training. Additional home-based mental health services beyond 240 hours are eligible for medical assistance with prior authorization.

F. Psychotherapy provided by a person who is not a mental health professional as defined in part 9505.0175, subpart 28, or a mental health practitioner providing mental health services as specified in part 9505.0323, subpart 31.

G. Individual, family, or group skills training provided by a person who is not qualified, at least, as a mental

Approved by Revisor _____

health practitioner as specified in part 9505.0175, subpart 27, and who does not maintain a consulting relationship whereby a mental health professional accepts full responsibility and is present on-site at least every sixth day on which the mental health practitioner provides the individual, family, or group skills training to the child with severe emotional disturbance or the child's family. The on-site presence of the mental health professional must be documented in the child's record and signed by the mental health professional who accepts the full responsibility.

H. Home-based mental health services provided by an entity specified in subpart 2 if the entity is not capable of providing all the components required in subpart 4.

I. Home-based mental health services by more than one mental health professional simultaneously unless prior authorization is obtained.

J. Home-based mental health services to a child or the child's family which duplicate health services funded under part 9505.0323, grants authorized according to Minnesota Statutes, section 245.4886, the Minnesota family preservation act, Minnesota Statutes, section 256F.03, subdivision 5, paragraph (e), or the Minnesota Indian family preservation act, Minnesota Statutes, sections 257.35 to 257.3579. However, up to 60 hours of day treatment services under part 9505.0323 provided concurrently with home-based mental health services to a child with severe emotional disturbance are eligible for medical assistance payment if the child is being phased out of day treatment services and phased into home-based mental health services or if the child is being phased out of home-based mental health services and phased into day treatment services and the home-based mental health services are identified with the goals of the child's individual treatment plan.

K. Home-based mental health services provided to a child with severe emotional disturbance who is not living in the child's residence. However, up to 35 hours of home-based mental health services provided to a child with severe emotional

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by Revisor _____

disturbance who is residing in a hospital group home as defined in part 9560.0520, subpart 4, residential treatment facility licensed under parts 9545.0900 to 9545.1090, regional treatment center, or other institutional group setting are eligible for medical assistance payment if the services are provided under an individual treatment plan for the child developed by the provider working with the child's discharge planning team and the services are needed to assure the child's smooth transition to living in the child's residence.

L. Home-based mental health services provided in violation of any provision of subparts 1 to 5.

Approved
by Revisor _____

APPROVED AS TO FORM AND LEGALITY
HUBERT H. HUMPHREY III
ATTORNEY GENERAL
Dec 17 19 91
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 20 1991
James Anderson Growe
Secretary of State

4:00 PM
PB

Department of Human Services

Adopted Emergency Amendments to Permanent Rules and Emergency Rules Relating to Professional Home-Based Mental Health Services

Rules as Adopted

9505.0175 DEFINITIONS.

[For text of subps 1 to 42, see M.R.]

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~~A. the child is being provided therapeutic support of foster care as defined in Minnesota Statutes, section 245.4871, subdivision 34; or~~

~~B.~~ the foster parent is not the primary caregiver and does not reside with the child.

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Approved by Revisor PER/JR

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D. "Home-based mental health services" means a culturally appropriate, structured program of intensive mental health services provided to a child with severe emotional disturbance who is at risk of out-of-home placement because of an event or condition which exacerbates the child's severe emotional disturbance or who is returning from out-of-home placement because of the severe emotional disturbance. The services are for the purposes of resolving an acute episode of emotional disturbance affecting the child with the severe emotional disturbance or the child's family, reducing the risk of the child's out-of-home placement, or reunifying and reintegrating the child into the child's family after an out-of-home placement. The services are provided primarily in the child's residence but may also be provided in the child's school, the home of a relative of the child, a recreational or leisure setting, or the site where the child receives day care. For purposes of this part, home-based mental health services is used as a synonym for "professional home-based family treatment" in Minnesota Statutes, section 245.4871, subdivision 31.

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B. The services must be designed to meet the specific mental health needs of the child and the child's family according to the child's individual treatment plan that is developed by the provider and that specifies the treatment goals and objectives for the child and the child's family.

C. The provider must provide, or assist the child or the child's family in arranging, crisis services for the child and the family of a child which must be available 24 hours per day, seven days a week.

D. The caseload of a home-based mental health service

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A. diagnostic assessment as specified in part 9505.0323;

B. individual psychotherapy, family psychotherapy, and multiple-family group psychotherapy as defined in part 9505.0323; and

C. individual, family, or group skills training that is designed to improve the basic functioning of the child with severe emotional disturbance and the child's family in the activities of daily and community living, and to improve the social functioning of the child and the child's family in areas important to the child's maintaining or reestablishing residency in the community. For purposes of this item, "community" means the child's residence, work, school, or peer group. The individual, family, and group skills training must:

(1) consist of activities designed to promote skill development of both the child with severe emotional disturbance and the child's family in the use of age-appropriate daily living skills, interpersonal and family relationships, and leisure and recreational services;

(2) consist of activities which will assist the family to improve its understanding of normal child development and to use parenting skills that will help the child with severe

Approved by Revisor _____

emotional disturbance achieve the goals outlined in the child's individual treatment plan; and

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Subp. 6. **Excluded services.** The services specified in items A to L are not eligible for medical assistance payment.

A. Home-based mental health services provided to a child who at the time of service provision has not been determined to be a child with severe emotional disturbance except for the first 30 hours of home-based mental health services provided to a child who is later determined to have a severe emotional disturbance.

B. More than 192 hours of individual, family, or group skills training within a six-month period.

C. More than a combined total of 48 hours within a six-month period of individual psychotherapy and family psychotherapy and multiple-family group psychotherapy except in an emergency and prior authorization or after-the-fact authorization of the psychotherapy is obtained under part 9505.5015.

D. More than 240 hours of a combination of any of the psychotherapies and individual, family, or group skills training within a six-month period.

E. Home-based mental health services that exceed 240 hours in any combination of the psychotherapies and individual, family, or group skills training. Additional home-based mental health services beyond 240 hours are eligible for medical assistance with prior authorization.

F. Psychotherapy provided by a person who is not a mental health professional as defined in part 9505.0175, subpart 28, or a mental health practitioner providing mental health services as specified in part 9505.0323, subpart 31.

G. Individual, family, or group skills training provided by a person who is not qualified, at least, as a mental

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by Revisor _____

health practitioner as specified in part 9505.0175, subpart 27, and who does not maintain a consulting relationship whereby a mental health professional accepts full responsibility and is present on-site at least every sixth day on which the mental health practitioner provides the individual, family, or group skills training to the child with severe emotional disturbance or the child's family. The on-site presence of the mental health professional must be documented in the child's record and signed by the mental health professional who accepts the full responsibility.

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K. Home-based mental health services provided to a child with severe emotional disturbance who is not living in the child's residence. However, up to 35 hours of home-based mental health services provided to a child with severe emotional

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by Revisor _____

disturbance who is residing in a hospital group home as defined in part 9560.0520, subpart 4, residential treatment facility licensed under parts 9545.0900 to 9545.1090, regional treatment center, or other institutional group setting are eligible for medical assistance payment if the services are provided under an individual treatment plan for the child developed by the provider working with the child's discharge planning team and the services are needed to assure the child's smooth transition to living in the child's residence.

L. Home-based mental health services provided in violation of any provision of subparts 1 to 5.

Approved
by Revisor _____

APPROVED AS TO FORM AND LEGALITY
HUBERT H. HUMPHREY III
ATTORNEY GENERAL
Dec 16 19 91
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

DEC 17 1991

Joan Anderson Growe
Secretary of State

10:00 AM

PB

DEPARTMENT: Office of the Attorney General **STATE OF MINNESOTA**

OFFICE MEMORANDUM

DATE: December 17, 1991

TO: ELEANOR WEBER
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul

FROM: MARY JO MURRAY
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-3258

SUBJECT: In the Matter of the Adopted Rule Relating to Professional Home-Based Mental Health Services

The above-referenced rule has been approved as to its legality by the Attorney General on December 16, 1991.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

MJM:sc
Enclosures
cc: Deborah Huskins
William Brown, Chief Judge
MaryAnn Hruby

Emergency Rules
10 working days

MJM
12/9/91

RULE REVIEW CHECKLIST

File No. 1873
DATE RECEIVED 12-3-91
REVIEW DATE 12/16/91
DUE DATE 12/16/91
(DIS)APPROVED 12/16/91
WITHDRAWN _____

Docket No. 050009 0866
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 12/9/91
REVISOR (DIS)APPROVED _____
FILED W/SEC. OF STATE 12/17/91 12/19/91
RETURNED TO AGENCY 12/17/91 12/20/91

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
July 22, 1991 Date published in State Register
_____ Comments

~~Petition for Adoption of a Rule~~

~~Board's Authorizing Resolution~~
_____ Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
1991 MN Laws Chap 292 Statutory Authority Article 6, Sec 10
no statement Small Business Statement
no statement Expenditure of public money statement
Oct 3, 1991 Signature

NA Statement of Need and Reasonableness (if applicable)
_____ Small Business Statement do have a memo
_____ Fees - § 16A.128 attached to findings

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
Oct 9, 1991 Dated 30/25 days before adoption
✓ Notice attached indicates it is attached
_____ Copy of rule or summary attached

✓ Publication in State Register
Oct 14, 1991 Date 30/25 days before adoption

✓ 180-day deadline from:
~~see notes~~ Effective date of law requiring rule (14.12) (both rules) amendments don't apply
✓ end of comment period (§ 14.26) (rules without hearing)
~~see notes~~ effective date of statutory authority (§ 14.29) (emergency rules)

~~Resolution Adopting~~
_____ Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
Dec 4, 1991 Date memo attached to findings

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Deborah Huskins Name of SAAG representing agency

~~Notice of Submission to Attorney General (if applicable)~~

~~Affidavit of Mailing Notice to Attorney General (if applicable)~~

Stat Authority MN Laws Chapter 292, Art 6, Sec 10

The commissioner shall adopt emergency rules to govern implementation of case management ... by January 1, 1992, and must adopt permanent rules by January 1, 1993

Effective dates Sec 61
Subd 1 Sections 5 and 10 are effective following final enactment
no effective date so August 1, 1991

End of comment period Nov 8, 1991

Rules page 7 L. violations of any provision of subparts 1 to 5?
It could be better written but it's OK.

mems attached to findings - justifying Rules

180 deadline
effective - August 1 - Dec 4

August	30
Sept	30
Oct	31
Nov	30
Dec	4
	125

They are also made Jan 1, 1992 deadline if they are approved

State of Minnesota
Department of Human Services
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155

TO: Patricia Nolte, Legal Assistant
Public Finance Division
Capitol Office Building
525 Park Street

FROM: Eleanor Weber

SUBJECT: Attorney General's Review of Emergency Rule Related to Home-Based Mental Health Services to Medical Assistance Eligible Children, Part 9505.0324 [Emergency]

Enclosed are the documents required to be submitted under Minnesota Rules, part 2010.0400 for your review of an emergency rule for the above entitled matter.

Official documents in this submitted material include:

1. A copy or photocopy of the notice of solicitation of outside information or opinions as published in the State Register.

2. A copy of the proposed rule with a certificate of approval as to form by the revisor of statutes attached.

3. The notice of intent to adopt an emergency rule as mailed.

4. The affidavit of mailing the notice of intent to adopt an emergency rule. The affidavits state that the mailing list maintained by the agency pursuant to Minnesota Statutes, section 14.30, is accurate, complete, and current and that the notice of intent to adopt the emergency rule was mailed to all persons and groups whose names appear on the list.

5. A copy or photocopy of the notice of intent to adopt the emergency rule as published in the State Register.

6. Four copies of the emergency rule as adopted. Any modification made to the proposed rule is reflected on the rule as adopted and is approved as to form by the revisor of statutes.

7. The findings of fact, conclusions, and order adopting the emergency rule.

8. All written requests, submissions, or comments on the rule received by

the agency except requests solely for copies of the rule.

9. The declaration of the attorney in the attorney general's office who represents the agency.

10. The notice of submission of the rule to the attorney general, if applicable.

11. The affidavit of mailing notice of submission of the rule to the attorney general, if applicable.

If you have any questions on this submitted material, please call me at 297-4301.

serious and persistent mental illness, *Minnesota Rules*, parts 9505.0476 to 9505.0491. The amendments will implement the requirements of *Minnesota Statutes 1991*, section 245.4771, subdivision 9. The adoption of the rule amendments is authorized by *Minnesota Statutes 1991*, sections 245.4771, subdivision 9 and 245.484.

The State Department of Human Services requests information and opinions concerning the subject matter of the rule amendments. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

Oral statements will be received during regular business hours over the telephone at (612) 297-4301 and in person at the above address.

All statements of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules Without a Hearing is published in the *State Register*. Any written material received by the State Department of Human Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 15 July 1991

Eleanor Weber, Assistant Director
Rules and Bulletins Division

Department of Human Services

Health Care Management Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Professional Home-Based Family Treatment Services for Medical Assistance Eligible Children

NOTICE IS HEREBY GIVEN that the State Department of Human Services is seeking information or opinions from sources outside the agency in preparing to propose the adoption of rules governing the implementation of professional home-based family treatment services for medical assistance eligible children as specified in *Minnesota Statutes 1991*, section 245.4884, subdivision 3. The adoption of the rules is authorized by *Minnesota Statutes 1991*, section 245.484.

The State Department of Human Services requests information and opinions concerning the subject matter of the rules. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

Oral statements will be received during regular business hours over the telephone at (612) 297-4301 and in person at the above address.

All statements of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules Without a Hearing is published in the *State Register*. Any written material received by the State Department of Human Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 15 July 1991

Eleanor Weber, Assistant Director

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Emergency Rule of the State Department of Human Services Relating to Home-Based Mental Health Services Under Medical Assistance, Minnesota Rules, part 9505.0324

AFFIDAVIT OF ADDITIONAL MAILING

Nancy Bishop, being first duly sworn, deposes and says:

That on the 9th day of October, 1991, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed 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 parties:

- The 87 Minnesota County Human Services Agencies
- Advisory Committee Members
- Department of Human Services Mental Health Implementation Task Force
- Children's Mental Health Subcommittee of the State Mental Health Advisory Council
- Other interested persons, including representatives of family services, advocates for the mentally ill, and county social services

KATHY ANN McDONOUGH
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Oct. 16, 1992

Nancy L. Bishop

Subscribed and sworn to before me
this 11th day of October, 1991
Kathy Ann McDonough

Department of Human Services

In the Matter of the Proposed Adoption of Emergency Rule of the State Department of Human Services Relating to Home-Based Mental Health Services Under Medical Assistance, Minnesota Rules, part 9505.0324

NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled emergency rule. The statutory authority to adopt the emergency rule is contained in Minnesota Statutes, sections 245.484 (*Laws of Minnesota 1991*, chapter 292, article 6, section 10), 256B.04, subdivision 2 and 256B.0625, subdivision 14. The agency, in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in Minnesota Statutes, sections 14.29 to 14.36.

All persons have 25 days or until 4:30 p.m. on November 8, 1991 after publication to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. Any comments must be submitted to: Eleanor Weber, Rules Division, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, (612) 297-4301.

The proposed emergency rule sets standards to receive medical assistance payment as a provider of home-based mental health services to medical assistance eligible children who have a severe emotional disturbance. The rule: establishes home-based mental health service as a service under EPSDT (Early and Periodic Screening, Diagnosis, and Treatment); establishes a diagnostic assessment as the required screening mechanism; sets standards for service delivery by mental health professionals and mental health practitioners; requires coordination of the services with the child's case manager for mental health services; requires eligible service providers to be able to provide diagnostic assessment, individual psychotherapy, family psychotherapy, multiple family group psychotherapy and individual, family, or group skills training; and specifies expected outcomes of individual, family, and group skills training.

A free copy of the proposed emergency rule is available by contacting Nancy Bishop, Rules Division, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, (612) 296-7454.

The proposed emergency rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed emergency rule as noticed.

Upon adoption of the emergency rule by the agency, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for reviews as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Eleanor Weber at the address above.

The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11.

Date: October 3, 1991

Natalie Haas Steffen

NATALIE HAAS STEFFEN
Commissioner

In the Matter of the Adoption of Emergency Rules of the Department of Human Services Relating to Home-Based Mental Health Services for Medical Assistance Eligible Children, Minnesota Rules, Part 9505.0324 [Emergency]

DECLARATION OF COUNSEL

I, Deborah Huskins, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 98-M391-0866

Deborah K. Huskins

Special Assistant
Attorney General

Dated: December 5, 1991

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Emergency Rule of the State Department of Human Services Relating to Home-Based Mental Health Services Under Medical Assistance, Minnesota Rules, part 9505.0324

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Nancy Bishop, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the State Department of Human Services rulemaking mailing list is accurate, complete, and current as of this 9th day of October, 1991.

That on the 9th day of October, 1991, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt an Emergency Rule by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

KATHY ANN McDONOUGH
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Oct. 16, 1992

Nancy L. Bishop

Subscribed and sworn to before me this 11 day of October, 1991.

Kathy Ann McDonough

Department of Human Services

In the Matter of the Proposed Adoption of Emergency Rule of the State Department of Human Services Relating to Home-Based Mental Health Services Under Medical Assistance, Minnesota Rules, part 9505.0324

NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled emergency rule. The statutory authority to adopt the emergency rule is contained in Minnesota Statutes, sections 245.484 (*Laws of Minnesota 1991*, chapter 292, article 6, section 10), 256B.04, subdivision 2 and 256B.0625, subdivision 14. The agency, in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in Minnesota Statutes, sections 14.29 to 14.36.

All persons have 25 days or until 4:30 p.m. on November 8, 1991 after publication to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. Any comments must be submitted to: Eleanor Weber, Rules Division, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, (612) 297-4301.

The proposed emergency rule sets standards to receive medical assistance payment as a provider of home-based mental health services to medical assistance eligible children who have a severe emotional disturbance. The rule: establishes home-based mental health service as a service under EPSDT (Early and Periodic Screening, Diagnosis, and Treatment); establishes a diagnostic assessment as the required screening mechanism; sets standards for service delivery by mental health professionals and mental health practitioners; requires coordination of the services with the child's case manager for mental health services; requires eligible service providers to be able to provide diagnostic assessment, individual psychotherapy, family psychotherapy, multiple family group psychotherapy and individual, family, or group skills training; and specifies expected outcomes of individual, family, and group skills training.

A free copy of the proposed emergency rule is available by contacting Nancy Bishop, Rules Division, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, (612) 296-7454.

The proposed emergency rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed emergency rule as noticed.

Upon adoption of the emergency rule by the agency, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for reviews as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Eleanor Weber at the address above.

The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11.

Date: October 3, 1991

Natalie Haas Steffen

NATALIE HAAS STEFFEN
Commissioner

severe emotional disturbance and their families, and if all the requirements of *Minnesota Statutes*, sections 245.487 to 245.4888, are met.

9535.1765 [Emergency] RECORDS.

Subpart 1. **Maintenance of financial records.** The county board, its contracting service providers, and any subcontracting service providers shall maintain financial records using generally accepted accounting principles so that:

A. expenditures for children's community-based mental health services under parts 9535.1700 to 9535.1765 [Emergency] can be easily compared to the county board's approved budget for those services;

B. all sources of income can be readily identified; and

C. documentation is available for all expenditures.

Budget records must include a copy of all fiscal reports submitted to meet state or federal requirements.

Subp. 2. **Required records of services to children and their families.** The county board, its contracting service providers, and any subcontracting service providers shall maintain data specified by the commissioner about children's community-based mental health services funded under parts 9535.1700 to 9535.1765 [Emergency], so that the commissioner can determine the effectiveness of services in achieving the stated purpose as specified for:

A. family community support services under *Minnesota Statutes*, section 245.4884, subdivision 1;

B. case management services under *Minnesota Statutes*, section 245.4881;

C. day treatment under *Minnesota Statutes*, section 245.4884, subdivision 2;

D. professional home-based family treatment under *Minnesota Statutes*, section 245.4884, subdivision 3; and

E. foster care with therapeutic supports under *Minnesota Statutes*, section 245.4884, subdivision 4.

Among the data that must be collected are:

(1) information on client concerns;

(2) information on client satisfaction with services received; and

(3) submission of periodic reports by the county in the manner prescribed on forms provided by the commissioner.

Subp. 3. **Availability and access.** The county board, its contracting service providers, and any subcontracting service providers shall make available to the commissioner, upon request and for audit purposes, all budget, expenditure, and service records pertaining to the provision of children's community-based mental health services funded under parts 9535.1700 to 9535.1765 [Emergency].

The commissioner shall be given access without prior notice to the physical plant and grounds where children's community-based mental health services are provided and to documents and information relevant to children's community-based mental health services. The commissioner shall be given access as often as the commissioner deems necessary.

Additionally, the county board, its contracting service providers, and any subcontracting service providers shall allow the commissioner to make photocopies, photographs, and audio and videotape recordings at the commissioner's expense.

Subp. 4. **Retention.** The county board, its contracting service providers, and any subcontracting service providers shall retain a copy of the records required under subpart 1 for five years unless an audit requires a longer retention period. The records may be microfilmed at the end of the third year after the record was made.

Department of Human Services

Proposed Emergency Amendments to Permanent Rules and Emergency Rules Relating to Professional Home-Based Mental Health Services

Notice of Intent to Adopt an Emergency Rule

NOTICE IS HEREBY GIVEN that the State Department of Human Services intends to adopt the above-entitled emergency rule. The statutory authority to adopt the emergency rule is contained in *Minnesota Statutes*, sections 245.484 (*Laws of Minnesota 1991*, chapter 292, article 6, section 10), 256B.04, subdivision 2 and 256B.0625, subdivision 14. The agency, in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in *Minnesota Statutes*, sections 14.29 to 14.36.

All persons have 25 days or until 4:30 p.m. on November 8, 1991 after publication to submit data and views on the proposed

emergency rule or any part or subpart of the rule in writing. Any comments must be submitted to: Eleanor Weber, Rules Division, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, (612) 297-4301.

The proposed emergency rule sets standards to receive medical assistance payment as a provider of home-based mental health services to medical assistance eligible children who have a severe emotional disturbance. The rule: establishes home-based mental health service as a service under EPSDT (Early and Periodic Screening, Diagnosis, and Treatment); establishes a diagnostic assessment as the required screening mechanism; sets standards for service delivery by mental health professionals and mental health practitioners; requires coordination of the services with the child's case manager for mental health services; requires eligible service providers to be able to provide diagnostic assessment, individual psychotherapy, family psychotherapy, multiple family group psychotherapy and individual, family, or group skills training; and specifies expected outcomes of individual, family, and group skills training.

A free copy of the proposed emergency rule is available by contacting Nancy Bishop, Rules Division, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, (612) 296-7454.

The proposed emergency rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed emergency rule as noticed.

Upon adoption of the emergency rule by the agency, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for reviews as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Eleanor Weber at the address above.

The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with *Minnesota Statutes*, section 14.35.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11.

Natalie Haas Steffen
Commissioner

Rules as Proposed

9505.0175 DEFINITIONS.

[For text of subps 1 to 42, see M.R.]

Subp. 43. **Residence.** "Residence" means the place a person uses as ~~his or her~~ a primary dwelling place, and intends to continue to use indefinitely for that purpose. Residence is not a group home as defined by part 9560.0520, subpart 4, a residential treatment facility licensed under parts 9549.0900 to 9545.1090, an acute care hospital licensed under *Minnesota Statutes*, chapter 144, a regional treatment center or other institutional group setting, or a foster family home in which:

A. the child is being provided therapeutic support of foster care as defined in *Minnesota Statutes*, section 245.4871, subdivision 34; or

B. the foster parent is not the primary caregiver and does not reside with the child.

[For text of subps 44 to 50, see M.R.]

9505.0324 [Emergency] HOME-BASED MENTAL HEALTH SERVICES.

Subpart 1. **Definitions.** The terms used in this part have the meanings given them in items A to E.

A. "Child" means a person under age 21 who is eligible for early periodic screening, diagnostic, and treatment services under parts 9505.1693 to 9505.1748 and who has been determined to be in need of home-based mental health services.

B. "Child with severe emotional disturbance" refers to the term defined in *Minnesota Statutes*, section 245.4871, subdivision 6, and, in addition, to a person at least age 18 but under age 21 who has serious and persistent mental illness as defined in *Minnesota Statutes*, section 245.462, subdivision 20.

C. "Emotional disturbance" refers to the term defined in *Minnesota Statutes*, section 245.4871, subdivision 15, and, in addition, to a person at least age 18 but under age 21 who has a mental illness as defined in *Minnesota Statutes*, section 245.462, subdivision 20.

D. "Home-based mental health services" means a culturally appropriate, structured program of intensive mental health services provided to a child with severe emotional disturbance who is at risk of out-of-home placement because of an event or condition which exacerbates the child's severe emotional disturbance or who is returning from out-of-home placement because of the severe emotional disturbance. The services are for the purposes of resolving an acute episode of emotional disturbance affecting the child with the severe emotional disturbance or the child's family, reducing the risk of the child's out-of-home placement, or reunifying

and reintegrating the child into the child's family after an out-of-home placement. The services are provided primarily in the child's residence but may also be provided in the child's school, the home of a relative of the child, a recreational or leisure setting, or the site where the child receives day care. For purposes of this part, home-based mental health services is used as a synonym for "professional home-based family treatment" in *Minnesota Statutes*, section 245.4871, subdivision 31.

E. "Individual treatment plan" has the meaning given in *Minnesota Statutes*, section 245.4871, subdivision 21.

Subp. 2. **Eligible providers of home-based mental health services.** The entities in items A to F are eligible to provide home-based mental health services:

A. outpatient hospitals licensed under *Minnesota Statutes*, section 144.50;

B. community mental health centers providing community mental health center services as specified in part 9505.0260;

C. an entity approved by the commissioner as specified in parts 9520.0750 to 9520.0870;

D. physician directed clinics as defined in part 9505.0345, subpart 1, item A;

E. community health clinics under part 9505.0255; and

F. an entity operated by or under contract to the county to provide home-based mental health services.

Subp. 3. **Eligibility to receive home-based mental health services.** Home-based mental health services are available to a child who has been referred for home-based mental health services as a child with severe emotional disturbance who needs home-based mental health services. For purposes of the determination of a child's eligibility to receive home-based mental health services under this part, a diagnostic assessment as defined in *Minnesota Statutes*, section 245.4871, subdivision 11, in the case of a child under age 18 or a diagnostic assessment as defined in *Minnesota Statutes*, section 245.462, subdivision 9, in the case of a child at least age 18 but under age 21 is a screening under parts 9505.1693 to 9505.1748.

Subp. 4. **Eligibility for medical assistance payment.** To be eligible for medical assistance payment, the provider of home-based mental health services must meet the requirements in items A to E. The home-based mental health service provider must assist the case manager, if any, in coordinating other services to the child.

A. The services must be provided by mental health professionals and mental health practitioners who are skilled in the delivery of mental health services to children and their families.

B. The services must be designed to meet the specific mental health needs of the child and the child's family according to the child's individual treatment plan that is developed by the provider and that specifies the treatment goals and objectives for the child and the child's family.

C. The provider must provide, or assist the child or the child's family in arranging, crisis services for the child and the family of a child which must be available 24 hours per day, seven days a week.

D. The caseload of a home-based mental health service provider must be of a size that can reasonably be expected to enable the provider to meet the needs of the children and their families in the provider's caseload and permit the delivery of the services specified in the children's individual treatment plans.

E. The services must be coordinated with the child's case manager for mental health services if the child is receiving case management services.

Subp. 5. **Components of home-based mental health services.** A provider of home-based mental health services specified in subpart 2 must be capable of providing all of the components specified in this subpart. However, a provider is responsible to provide a component only if the component is specified in a child's individual treatment plan. The components are:

A. diagnostic assessment as specified in part 9505.0323;

B. individual psychotherapy, family psychotherapy, and multiple-family group psychotherapy as defined in part 9505.0323; and

C. individual, family, or group skills training that is designed to improve the basic functioning of the child with severe emotional disturbance and the child's family in the activities of daily and community living, and to improve the social functioning of the child and the child's family in areas important to the child's maintaining or reestablishing residency in the community. For purposes of this item, "community" means the child's residence, work, school, or peer group. The individual, family, and group skills training must:

(1) consist of activities designed to promote skill development of both the child with severe emotional disturbance and the child's family in the use of age-appropriate daily living skills, interpersonal and family relationships, and leisure and recreational services;

(2) consist of activities which will assist the family to improve its understanding of normal child development and to use

parenting skills that will help the child with severe emotional disturbance achieve the goals outlined in the child's individual treatment plan; and

(3) promote family preservation and unification, community integration, and reduced use of unnecessary out-of-home placement or institutionalization of children with severe emotional disturbance.

Subp. 6. **Excluded services.** The services specified in items A to L are not eligible for medical assistance payment.

A. Home-based mental health services provided to a child who at the time of service provision has not been determined to be a child with severe emotional disturbance except for the first 30 hours of home-based mental health services provided to a child who is later determined to have a severe emotional disturbance.

B. More than 192 hours of individual, family, or group skills training within a six-month period.

C. More than a combined total of 48 hours within a six-month period of individual psychotherapy and family psychotherapy and multiple-family group psychotherapy except in an emergency and prior authorization or after-the-fact authorization of the psychotherapy is obtained under part 9505.5015.

D. More than 240 hours of a combination of any of the psychotherapies and individual, family, or group skills training within a six-month period.

E. Home-based mental health services that exceed 240 hours in any combination of the psychotherapies and individual, family, or group skills training. Additional home-based mental health services beyond 240 hours are eligible for medical assistance with prior authorization.

F. Psychotherapy provided by a person who is not a mental health professional as defined in part 9505.0175, subpart 28, or a mental health practitioner providing mental health services as specified in part 9505.0323, subpart 31.

G. Individual, family, or group skills training provided by a person who is not qualified, at least, as a mental health practitioner as specified in part 9505.0175, subpart 27, and who does not maintain a consulting relationship whereby a mental health professional accepts full responsibility and is present on-site at least every sixth day on which the mental health practitioner provides the individual, family, or group skills training to the child with severe emotional disturbance or the child's family. The on-site presence of the mental health professional must be documented in the child's record and signed by the mental health professional who accepts the full responsibility.

H. Home-based mental health services provided by an entity specified in subpart 2 if the entity is not capable of providing all the components required in subpart 4.

I. Home-based mental health services by more than one mental health professional simultaneously unless prior authorization is obtained.

J. Home-based mental health services to a child or the child's family which duplicate health services funded under part 9505.0323, grants authorized according to *Minnesota Statutes*, section 245.4886, the Minnesota family preservation act, *Minnesota Statutes*, section 256F.03, subdivision 5, paragraph (e), or the Minnesota Indian family preservation act, *Minnesota Statutes*, sections 257.35 to 257.3579. However, up to 60 hours of day treatment services under part 9505.0323 provided concurrently with home-based mental health services to a child with severe emotional disturbance are eligible for medical assistance payment if the child is being phased out of day treatment services and phased into home-based mental health services or if the child is being phased out of home-based mental health services and phased into day treatment services and the home-based mental health services are identified with the goals of the child's individual treatment plan.

K. Home-based mental health services provided to a child with severe emotional disturbance who is not living in the child's residence. However, up to 35 hours of home-based mental health services provided to a child with severe emotional disturbance who is residing in a hospital are eligible for medical assistance payment if the services are provided under an individual treatment plan for the child developed by the provider working with the child's discharge planning team and the services are needed to assure the child's smooth transition to living in the child's residence.

L. Home-based mental health services provided in violation of any provision of subparts 1 to 5.

Department of Human Services

In the Matter of the Proposed Adoption of Emergency Rule of the State Department of Human Services Relating to Home-Based Mental Health Services Under Medical Assistance, Minnesota Rules, part 9505.0324

NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE

(1) Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled emergency rule. The statutory authority to adopt the emergency rule is contained in Minnesota Statutes, sections 245.484 (*Laws of Minnesota 1991*, chapter 292, article 6, section 10), 256B.04, subdivision 2 and 256B.0625, subdivision 14. The agency, in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in Minnesota Statutes, sections 14.29 to 14.36.

(2) All persons have 25 days or until 4:30 p.m. on November 8, 1991 after publication to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. Any comments must be submitted to: (3) Eleanor Weber, Rules Division, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, (612) 297-4301.

(4) The proposed emergency rule sets standards to receive medical assistance payment as a provider of home-based mental health services to medical assistance eligible children who have a severe emotional disturbance. The rule: establishes home-based mental health service as a service under EPSDT (Early and Periodic Screening, Diagnosis, and Treatment); establishes a diagnostic assessment as the required screening mechanism; sets standards for service delivery by mental health professionals and mental health practitioners; requires coordination of the services with the child's case manager for mental health services; requires eligible service providers to be able to provide diagnostic assessment, individual psychotherapy, family psychotherapy, multiple family group psychotherapy and individual, family, or group skills training; and specifies expected outcomes of individual, family, and group skills training.

(5) A free copy of the proposed emergency rule is available by contacting Nancy Bishop, Rules Division, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, (612) 296-7454.

(6) The proposed emergency rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed emergency rule as noticed.

(7) Upon adoption of the emergency rule by the agency, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for reviews as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Eleanor Weber at the address above.

(8) The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

(9) Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11.

Date: October 3, 1991

Natalie Haas Steffen

NATALIE HAAS STEFFEN
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF EMERGENCY AMENDMENTS TO PERMANENT RULES OF THE DEPARTMENT OF HUMAN SERVICES AND EMERGENCY RULES RELATING TO PROFESSIONAL HOME-BASED MENTAL HEALTH SERVICES, Part 9505.0175, Subpart 43 and Part 9505.0324 [Emergency]

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING EMERGENCY RULE

(1) Notice of the Commissioner's intent to adopt the above entitled emergency rule was published in the State Register on October 14, 1991 and was also sent by United States mail to all persons in the list maintained by the agency pursuant to Minnesota Statutes, section 14.30 on October 9, 1991.

(2) All persons were given the opportunity to submit written comment on the rule for at least 25 days after the notice of proposed rulemaking. (4) No requests for notice of submission to the attorney general were received by the agency.

Based on the comments and evidence in the record before the agency, I find the following:

General comment

Department discussion with the advisory committee assisting in the development of proposed part 9505.0324 [Emergency] included consideration of the reason the rule defines child as a person under age 21 whereas the Children's Mental Health Act sets forth the requirements for professional home-based family treatment services (hereafter called home-based mental health services) in Minnesota Statutes, section 245.4884 defines child in section 245,4871, subdivision 5 to be a person under 18 years of age.
The information presented to the advisory committee is summarized in the attached memorandum from Mr. Ron Hook, Health Care Management Division, Department of Human Services.

(3) **General comment**

Ms. Stacy S. Remke, LICSW, Home Care Program, Minneapolis Children's Medical Center, expressed concern about the exclusion of services in a child's foster home. Ms. Remke expressed her belief that emotional or behavioral problems in children, and the consequent risk for the children's out of home placement are "frequently secondary to their medical problems." She stated that these are critical issues to address in order to prevent out of home placement.
Ms. Remke also stated that she sees two populations of children in whom emotional and behavioral problems may arise. One population is comprised of children who live in their own homes or in family foster care homes. The second population consists of children in out-of-home placement, often for long periods of time, because they are medically fragile, who also may have emotional and behavioral problems. She is concerned that the Department consider the special needs of

"this small but complex and resource intensive population...", that is the second population of children.

Department response

The goal of home-based mental health services is to return to the family a child with serious and persistent mental illness who has been institutionalized or placed in group foster care that is operated by shift staff who do not live with the child. Many of the children in the second population described by Ms. Remke probably will not go home but will continue to live in an out-of-home placement appropriate to obtain the services needed because of their medically fragile condition. Medically fragile SED children who are medical assistance eligible and who live in corporate foster care operated by shift staff are eligible to receive needed mental health services pursuant to part 9505.0323. Medically fragile SED children who are medical assistance recipients and who live at home or in a family foster care home are eligible for home-based mental health services.

Home-based mental health services are available to a child diagnosed with severe emotional disturbance (SED) who is placed in a family foster care home in which the foster parent or parents live with the child. When foster care is provided in a group home as defined in part 9560.0520, subpart 4, payment for the services includes payment for therapeutic support that the child needs. Furthermore placement in such a home is an "out-of-home placement" in which the child is being cared for by shift staff who provide care different from the family-centered care by foster parents who live with the child. As the goal of home-based mental health services is to assist the SED child to live at home and avoid the risk of out-of-home placement, paying for home based mental health services provided in an out-of-home placement which is other than a family foster care home seems contrary to the program's purpose unless the services are provided to assist the child to make a transition to the child's own home or family foster care home. See Minnesota Statutes 1991, section 245.4871, subdivision 31 and Subpart 1, item D which define home-based mental health services.

An SED child who is living with his or her own parents or in a family foster care home may have underlying physical conditions that affect the child's mental health and need for mental health services. Medical assistance will pay for the health services necessary for the child's physical condition to the same extent as specified for all medical assistance eligible persons. Additionally if the medical assistance eligible child is medically fragile, living at home or in a family foster care home, and receiving medically necessary services under the community alternatives waiver (CAC), medical assistance will pay for home-based mental health services needed by the child. The purposes of the CAC services under the waiver from the Health Care Financing Administration (HCFA), to prevent the institutionalization of the child and enable the child to live at home, are consistent with the purposes of home-based mental health services. Thus, medical assistance reimbursement is available for the child's home-based mental health services to the extent the service meets the requirements of this part and other medical assistance program rules and federal waivers applicable to the child's other health services.

The Department declines to modify the rule.

Part 9505.0175, subpart 43; page 1, lines 9 to 21.

Dr. Dana Fox, Outpatient Program Director, Washburn Child Guidance Center; Dr. Joel Hetler, Manager of Children's Mental Health, Ramsey County Human Services; and Mr. Mark Kuppe, Director of Family and Adolescent Mental Health Services, Human Services, Inc., Washington County expressed their concern about the ineligibility of a child for medical assistance reimbursed home-based mental health services if the child is in a therapeutic foster home. They suggested that this subpart be amended to include a child who is being provided therapeutic support of foster care and the child who is living in a setting in which the foster parent is not the primary care giver and does not reside with the child.

Department response

As discussed above, medical assistance eligible children living in a family foster care home in which the foster parents live are eligible to receive needed home-based mental health services as specified in this part. However, the Department believes that a foster home operated by shift staff is not the same as a foster family home. The Department agrees with Drs. Fox and Hetler and Mr. Kuppe that home-based mental health services may be needed by the child who is receiving therapeutic support of foster care in a family foster care setting. The purpose of such therapeutic support of foster care is to assist the child to return home or prevent an out-of-home placement. However, the payment for a child's care in a group foster care setting includes payment for therapeutic support of foster care that is provided by the staff. The Department accepts part of the request of Drs. Fox and Hetler and Mr. Kuppe and modifies the proposed rule to read as follows:

page 1, lines 16 to 21 "institutional group setting, or a foster family home in which the foster parent is not the primary caregiver and does not reside with the child.

The modification is not substantial but only for purposes of clarification.

Subpart 6, Excluded services, Item C, page 5, line 17; item D, page 5, line 23; item E, page 5, lines 26 and 29

Drs. Fox and Hetler and Mr. Kuppe suggested increasing the number of hours of home-based mental service that are eligible for medical assistance payment as follows: item C, from 48 hours to 96 hours; item D, from 240 to 288 hours; item E, in lines 26 and 29, from 240 to 288 hours.

Department response

The Department shares the concern of Drs. Fox and Hetler and Mr. Kuppe that medical assistance payment be available to pay for mental health services needed by eligible children. Minnesota Statutes, section 256B.04, subdivision 12 requires the Department to place limits on the frequency with which the same or similar services may be covered by medical assistance for an individual recipient. In complying with this requirement, the Department has attempted to balance a child's need for mental health services and the fiscal constraints imposed on medical assistance funding by the Legislature. Thus, for example, the

Department recognizes in item C that an emergency may affect a child after the combined total of 48 hours has been exhausted. In this event, prior authorization or after the fact authorization may be requested for the additional hours of psychotherapy needed by the child as a home-based mental health service because of the emergency. Similarly item E permits additional hours of home-based mental health services that are a combination of psychotherapies and skills training if prior authorization is obtained. Prior authorization provides the Department an opportunity to review the child's need for services and carry out the requirement of Minnesota Statutes, 256B.04, subdivision 15 to safeguard against the unnecessary use of medical assistance services. See also parts 9505.5000 to 9505.5030 in regard to prior authorization.
Therefore the Department declines to modify the rule.

Subpart 6. Excluded services, Item I, page 6, lines 14 to 16.

Drs. Fox and Hetler and Mr. Kuppe expressed their concern about the need for prior authorization of co-therapy.

Department response

Prior authorization provides the Department an opportunity to review the child's need for co-therapy in receiving a mental health service. See parts 9505.5000 to 9505.5030 and Minnesota Statutes, section 256B.0625, subdivision 25. Minnesota Statutes, section 256B.04, subdivision 15 requires the Department to safeguard against unnecessary or inappropriate use of medical assistance services and against excess payments. Thus it is reasonable to provide the Department an opportunity to review the need for and appropriateness of co-therapy as it assists the Department to meet the statutory requirement. If the Department determines through the prior authorization process that the service is needed, the service will be eligible for medical assistance payment. Therefore, the Department declines to modify the rule.

Subpart 6. Excluded services, Item J; page 6, line 32.

Drs. Fox and Hetler and Mr. Kuppe requested modification of item J to permit medical assistance payment for additional hours of concurrent day treatment and home-based mental health services if prior authorization is obtained.

Department response

Many day treatment and home-based mental health services are the same or similar; for example, both include psychotherapy and individual skills development. A major difference is the service delivery site. The proposed rule limits day treatment provided concurrently with home-based mental health services to 60 hours of service to enable the child to make a transition. 60 hours of day treatment means the child may receive 3 hours per day for 5 days a week for 4 weeks. See part 9505.0323, subparts 15 and 16. The Department believes that 60 hours provides reasonable flexibility to assist the child's transition. The Department continues to be concerned about the possible duplication of services and the use of medical assistance funds to pay for duplicate services. See Minnesota Statutes, section 256B.04, subdivision 15 which requires the Department

to safeguard against unnecessary services and duplicate payments. Also see Minnesota Statutes, section 256B.04, subdivision 12 which requires the Department to place limits on the frequency with which the same or similar services may be covered by medical assistance for an individual recipient. The proposed rule is a reasonable attempt to pay for concurrent services and also comply with the cited statutes. Additionally, the emergency rule provides the Department an opportunity to gather data about the need for and use of concurrent services. The Department will review the request and discuss it with the advisory committee in developing the permanent rule.
The Department declines to modify the rule.

Subpart 6, Item K, page 6, lines 33 to 36 and page 7, lines 1 to 6

Mr. Kevin Kenney, Associate County Administrator, Hennepin County Bureau of Social Services, expressed concern about the "inability to provide home-based mental health services to children being discharged from residential treatment centers to foster homes in which therapeutic supports are being provided and group homes." He suggested language to amend this provision. Dr. Fox, Dr. Hetler, and Mr. Kuppe also expressed concern about the inability to provide home-based mental health services to children moving to a foster family home.

Department response

As noted above, the Department has modified the definition of residence to include a foster family care home in which the child is receiving therapeutic support and the foster parent lives in the home. The Department believes that it is necessary to clarify this item to provide for the transition of child who is returning home from an institutional setting. Therefore, the Department modifies the rule as follows:

page 7, line 1, disturbance who is residing in a hospital, group home as defined in part 9560.0520, subpart 4, residential treatment facility licensed under parts 9545.0900 to 9545.1090, regional treatment center, or other institutional group setting are eligible for

The modification is not substantial but expands the availability of the services in a manner consistent with the purpose of the rule, i.e., to enable the children to return to their homes.

Subpart 6, New Item M

Drs. Fox and Hetler and Mr. Kuppe suggested the addition of language that would permit medical assistance payment for home-based mental health services to a child in a group foster care setting if prior authorization is obtained.

Department response

The Department notes that the definition of residence in part 9505.0175, subpart 43 has been modified to remove the restriction related to the provision of therapeutic support of foster care (Item A of the suggested language) . The Department declines to accept the modification suggested in item B for the

reasons discussed above in the Department response under part 9505.0175, subpart 43.

New provision

Ronald C. Brand, Executive Director, Minnesota Association of Community Mental Health Programs, Inc. commented that "[t]he provisions for reimbursement need to consider payment for travel time."

Department response

The Department is aware that implementation of home-based mental health services depends on mental health professionals and mental health practitioners traveling to the child's residence. If travel is ineligible for medical assistance payment, will individual and family skills training be available to the extent needed by the child and the child's family? The Department thinks not. The policy consideration includes balancing the use of available medical assistance dollars to fund hours of needed service as compared to funds for travel time to provide the home-based services. This is a difficult issue which may have an impact on other medical assistance services. For example, medical assistance does not at present pay for travel of persons who provide medical assistance services such as personal care assistance and home health aid services in a recipient's home. The issue requires careful consideration not only by the Department but also during the deliberations of the rule advisory committee. Reimbursement of travel also raises procedural problems for the Department, e.g., the development of procedural codes necessary to ensure proper billing if travel is to be reimbursed.
The Department therefore declines the request to modify the rule but will consider the issue in developing the permanent rule.

It should be noted that a county may reimburse for travel out of county funds if mental health providers are serving medical assistance eligible children.

General comment

Mr. Brand commented, "We should encourage comprehensive coordinated care." He expressed the belief that the rule will create health care management problems as it will be difficult to link home-based mental health services with day treatment, case management, school programs, and outpatient services.

Department response

Children with severe emotional disturbance are eligible for case management services. A responsibility of a child's case manager is to coordinate a child's mental health services and to assist the child and the child's family to access the needed mental health services. The Department believes that the tools are available to link the services. See parts 9505.0476 to 9505.0491 about case management to persons with severe emotional disturbance who are eligible for medical assistance.

General comment

Mr. Brand commented about provider reimbursement rates.

Department response

Part 9505.0324 does not set reimbursement rates. There is no authority to address the provider reimbursement for mental health services in this rule.

General comment

Mr. Brand commented that clinic services do not require direct observational supervision and that requiring on-site supervision by a LCP (licensed consulting psychologist) is expensive and unnecessary if the supervision is available one-to-one in the office through normal supervisory mechanisms. Mr. Frank Sandelin, Director, and Ms. Emily Steinert, Social Services Supervisor, Todd County Social Services expressed concern about requiring a consulting relationship with a mental health professional on an on-site basis every sixth day when the site is the client's home. Gary E. Gunderson, LSW, Northern Pines Mental Health Center expressed a similar concern.

Department response

Clinical supervision does not require a licensed consulting psychologist. The required clinical supervision may be provided by any person qualified as a mental health professional. Such persons include licensed clinical psychologist, licensed psychologists, licensed independent clinical social workers, psychiatrists, and psychiatric nurses. See Minnesota Statutes, section 245.4871, subdivision 27. Clinical supervision is only required when the home-based mental health services are provided by a person who is only qualified as mental health practitioner. Therefore the clinical supervision requirement applies only to individual, family, and group skills training which may be provided by a mental health practitioner. Skills training is a new service. The Department wants some assurance in the first months of this new program that these home based mental health services are being appropriately provided. Additionally the Department believes that it is important for the clinical supervisor to meet face-to-face with the child receiving the service. Therefore it is necessary and reasonable that the clinical supervision be provided on-site in the child's residence. In developing the permanent rule, the Department will consider providing flexibility through a phased approach to the supervision requirement. The Department declines to modify the rule.

(B) NOW, THEREFORE, IT IS ORDERED that the rule identified as Minnesota Rules, Part 9505.0324 [Emergency] as modified is adopted this 4th day of December 1991 pursuant to authority invested in me by Minnesota Statutes 1991, section 245.484.

NATALIE HAAS STEFFEN
Commissioner

STATE OF MINNESOTA **DEPARTMENT OF HUMAN SERVICES**

OFFICE MEMORANDUM

TO: Attorney General, Adminstration **DATE:** September 10, 1991

FROM: Ron Hook, DHS **PHONE:** 7-7952

SUBJECT: Proposed Amendments to Rule 47 on Professional Home-Based Mental Health Services for Children

This information is being forwarded to you in the hopes that this information will assist you in determining the reasonableness of this proposed emergency rule.

The first clarification that I would like to make is why we have chosen to define child as including persons between 18 and 21. Under MA, there is only one way that a service can be limited to children only. That mechanism is the Early Periodic Screening, Diagnosis, and Testing (EPSDT) Program. Minnesota presently extends benefits under this program to any child under 21 years of age. Since this program authorizes the Department to limit the provision of Professional Home-Based Mental Health Services to children only, and since our existing EPSDT Program defines a child as under 21, the only way to use this limiting authority was to define a child as including persons between 18 and 21.

It is important to note that the fiscal note for this service only included the utilization of these services by children and thus the Legislature did not appropriate funds to allow this service to be provided to adults. In addition, the Legislature was quite specific in that this service was created exclusively for children. **(Minnesota Statutes 245.484 and 245.4871, Subd. 31).** It is also important to recognize that the Legislature clearly wishes to maximize the use of federal Medical Assistance funding for professional home-based mental health services for children. Therefore, the Department must comply with the Medical Assistance requirements in making this service available. **(Minnesota Statutes 245.461 Subd. 5, 245.484, 245.487 Subd. 6, 256B.04 Subd. 4--1991 Supplement)**

On pages 5 and 6:

A. The number 30 was derived from the hours necessary to complete a diagnostic assessment, with additional hours added to cover the added time necessary to conduct observation in a non-clinical setting after a client has been somewhat stabilized. The nature of the client utilizing these services is that s/he would be in a crisis oriented situation necessitating time for the client's condition to be stabilized through provision of home based services. (SEE 9505.0323 Subp. 6)

B. Day treatment allows for two hours per calendar day of these types of services, five days per week. As HBMHS are an intensive version of this treatment format, and provided in conjunction with psychotherapy services, one hundred ninety two hours of these services per over a period of 6 months, is adequate and appropriate. (SEE 9505.0323 Subp. 15). Six months is the period of time allowed for day treatment services to be provided before prior authorization is required.

C. The goal of HBMHS is to achieve an adequate level of therapeutic programming on a weekly basis. Forty-eight hours of psychotherapy over a 6 month period augments the one hundred ninety two hours of individual, family, or group skills training, to total up to 240 hours of therapy services over a 6 month period. This averages out to ten hours of therapy services within a one week period, when provided equally over a period of six months, and would appear to provide what the standard of practice is within existing home-based services programs.

D. This is a combination of B and C.

E. No Numbers.

F. No numbers.

G. The every-sixth-session supervision requirement is appropriate because practitioners are providing non-psychotherapy services, which need a less stringent level of supervision. Furthermore, it is consistent with the new rehab rule which requires a PT to supervise every sixth session of service by a PT assistant. SEE 9505.0385.

NOTE: The numbers in B and C above limiting services to a certain number within a 6 month period were derived from a survey

of 12 existing Home-Based Therapy Services Programs. With respect to the number of hours of services, the numbers provided for here exceed the average of the 12 programs surveyed. With respect to the 6 month period of time, this number appears to substantially represent the average duration of home-based therapy services.

HENNEPIN

BUREAU OF SOCIAL SERVICES
A-2303 Government Center
Minneapolis, Minnesota 55487-0232

November 8, 1991

Ms. Eleanor Weber, Rules Division
Minnesota Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

SUBJECT: Proposed adoption of emergency rules relating to Home-Based Mental Health Services under Medical Assistance, Minnesota Rules, part 9505.0324

Dear Ms. Weber:

I am pleased with the proposed amendments to Rule 47 relating to Home-Based Mental Health Services. The Rule provides Medical Assistance funding for an important service and is flexible enough to allow agencies to determine the most appropriate method for service delivery to children with severe emotional disturbance and their families. The final draft of the Rule incorporates changes suggested by the Rules Committee which have noticeably improved it and this is appreciated.

My only significant concern with this Rule is the inability to provide home-based mental health services to children being discharged from residential treatment centers, foster homes in which therapeutic supports are being provided and group homes. Since this provision is allowed for children being phased out of day treatment programs and for children during the discharge phase from inpatient hospitals, it is apparent the department sees this as an important service to ensure a smooth transition to community settings and it should be available in conjunction with the out of home placements listed above. (Please see attached for proposed specific changes in language.)

Overall, this Rule is a welcome addition which will allow for new Medical Assistance funding for a needed service.

Sincerely,

Kevin P. Kenney
Associate County Administrator

cc: David Sanders
Michael Weber

Hennepin County comments on Proposed Amendments to
Rule 47 relating to Home-Based Mental Health Services

9505.0324 Home-Based Mental Health Services

Subp. 6 Excluded Services

Page 7, line 1 should be amended as follows:

"disturbance who is residing in a hospital, residential treatment facility, group home or foster family home in which the child is being provided therapeutic support of foster care, are eligible for"

RECEIVED
INFORMATION DESK
'91 NOV -8 P2:06

NORTHERN PINES
Mental Health Center, Inc.

November 8, 1991

Ms. Eleanor Weber
Rules Division
Minnesota Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

Dear Ms. Weber:

RE: Emergency Rule Relating to Home-Based Mental Health Services under Medical Assistance Part 9505.0324

This letter is to place in writing a recent telephone conversation we had regarding the above-listed proposed emergency rule. Specifically my concerns are with 9505.0345 Subpart 6, Section G. on pages 5 and 6 in which on-site supervision is required by a mental health professional every sixth in-home session. I believe the on-site requirement to be excessive and counter-productive to the therapeutic process for the following reasons:

1. The inclusion of an additional person on an intermittent basis will hinder the healing process. Trust in the therapist is an essential element to therapy and incorporating an unknown person will not enhance this.

2. The availability of mental health professionals in rural Minnesota is already stretched very thin. To place more expectations on their time will further minimize their impact on clients and create a further scheduling problem. When also considering the crisis and volatility of in-home therapy in which the therapist must be willing to adapt to the family's needs, insuring a supervision session every sixth visit will be difficult - if not impossible on a consistent basis.

3. Lastly, requiring licensed staff to visit the homes regularly will significantly increase the overall costs for providing services, when considering travel and therapeutic time.

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☒ BRAINERD OFFICE - P.O. Box 481, 520 Fifth Street Northwest, Brainerd, MN 56401 [218-829-3235]
☐ LONG PRAIRIE OFFICE - 20 North Second Street, Long Prairie, MN 56347 [612-732-6602]
☐ WADENA OFFICE - 418 North Jefferson, Wadena, MN 56482 [218-631-2462]
☐ STAPLES OFFICE - 415 First Avenue East, Staples, MN 56479 [218-894-1002]

An Equal Opportunity Employer

Eleanor Weber
November 8, 1991
page 2

My request, in order to amend these issues, is that the on-site requirement for supervision be stricken.

If you have any comments or questions, please don't hesitate to contact me.

Otherwise, I am

Sincerely yours,

Gary E. Gunderson

Gary E. Gunderson, M.S. ds
L.S.W.

GEG:ds

TODD COUNTY
SOCIAL SERVICES

COURT HOUSE ANNEX
212 - 2nd Avenue South
Long Prairie, Mn. 56347-1608
(612) 732-4500

Branch - GOV'T. CENTER
611 Iowa Avenue
Staples, Mn. 56479
(218) 894-3983

- ★ Aging
- ★ Chemical Dependency
- ★ Child & Adult Protection
- ★ Child Support
- ★ Family Counselling
- ★ Financial Assistance
- ★ Food Stamps
- ★ Housing Rehabilitation
- ★ Information & Referral
- ★ Mental Health - Retardation

November 4, 1991

Received
11-7-91 lw

Eleanor Weber
Rules Division, MN-DHS
444 Lafayette Road
St. Paul, MN 55155-3816

RE: PROPOSED EMERGENCY RULE, MN RULES PART 9505.0324

Dear Ms. Weber:

This letter is written to voice concern about the terminology of the Proposed Emergency Rule Relating to Home-Based Mental Health Services Under Medical Assistance, MN Rules, part 9505.0324 Subp. 6., G.

The mental health practitioner's consulting relationship with a mental health professional does not seem feasible to be on an on-site basis every sixth day of service when the site is the client's home. It would seem more appropriate to document content and frequency of the clinical supervision similar to the method prescribed for Rule 74 Case Management Services but perhaps on at more frequent basis. We are concerned that the proposed on-site terminology could be viewed as an invasion of privacy from the client perspective and could actually confuse the therapeutic process.

The proposed terminology also seems to require more intense supervision than normal clinical services. On-site supervision in a clinical setting is not practiced as direct observation of the client's session, but rather a review of records and consultation regarding therapeutic progress. It would seem that similar supervision could take place with the in-home services without actually being present in the client's home.

We ask that you consider alternative terminology to this section of the proposed Emergency Rule prior to its implementation.

Sincerely,

Frank Sandelin

Frank Sandelin, Director

Emily Steinert

Emily Steinert, Social Services Supervisor

FS/ES:la

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People cannot and do not want to live unrelated to other people . . . We are responsible to and for one another, and this responsibility is the ultimate claim imposed on all men alike.



Minnesota Association of Community Mental Health Programs, Inc.

An Association of community mental health, mental retardation, and chemical dependency programs
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Duluth, MN 55805
(218) 728 4491

Donald C. Brand
Executive Director
1603 Laurel Avenue
Saint Paul, MN 55104
(612) 642-1903

FACSIMILE MESSAGE

DATE:	TIME:
11/12	9:10

TO: Elenor Nelson

FAX #: 2966244

FROM: Ron Brand

Minnesota Association of Community Mental Health Programs
1603 Laurel Avenue, Saint. Paul, MN 55104

Phone Number: (612) 642-1903
FAX Number: (612) 646-1223

Total # of pages, incl. cover sheet:

Message: Sorry for the previous problems in transmission - I hope this is helpful

RECEIVED
INFORMATION DESK
NOV 12 A9:26



Minnesota Association of Community Mental Health Programs, Inc.

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. . . . . .

naid C. Brand
ecutive Director
03 Laurel Avenue
int Paul, MN 55104
12) 642-1903

November 8, 1991

To: Elenor Weber

From: Ron Brand, Executive Director

Re: Comments on Rules

On behalf of our Association I want to make some comments on the Home-based family treatment rule.

1. The provisions for reimbursement need to consider payment for travel time. Otherwise, the fixed rate would discriminate against rural provider who must travel greater distances to provide the in-home care. Areas of greater population density have an advantage for this type of service. Such a provision is included in the case management rule and acts as a president. All the issues previously discussed in relation to the case management rule are relevant here. Frankly, it will be difficult for some rural providers to accept the idea of diverting staff from clinic services to do in-home, given that the reimbursement rate is equal. Further, several counties currently pay for this service as an effort to reduce out of home placements. They pay more than you currently propose to pay and include payment for travel time as part of the contract agreement. This creates some problems and will be difficult to coordinate at the local level. The reimbursement incentives do not reflect the policy initiative you are responsible to implement.

2. The Comprehensive Mental Health Act (1987/1989) calls for a coordinated, integrated, accountable system. The vendor eligibility requirements, the open vendor system, does little to reinforce this policy. While it may promote development of new services, it will create health care management problems. It will be difficult to link these services with day treatment, case management, school programs, and outpatient services. We should encourage comprehensive, coordinated care. Combined with the reimbursement rate structure, it may reinforce development of small single purpose programs without sufficient back-up and coordination capability. We should discuss this issue further.

3. Allow me a general comment about reimbursement rates. The reimbursement rates for more comprehensive providers, like our members, are low. Let's try to equalize rates among masters and Ph.D level providers and give enhanced rates to providers who are committed to this low income population and provide coordinated care for preferred providers under the county mental health plan. Their costs are often more due to the licensing requirements and supervision requirements and quality assurance policies.

4. I have heard concerns raised about the requirement for on-site supervision by a LCP stating that it is expensive and unnecessary if the supervision is available one-to-one in the office through normal supervisory mechanisms. Clinic services do not require direct observational supervision.

Thank you for your consideration. Please feel free to contact me to discuss these ideas further.

Washburn Child Guidance Center • 2430 Nicollet Avenue South • Minneapolis, Minnesota 55404 • (612) 871-1454 • FAX (612) 871-1505

October 30, 1991

copy & FAX transmittal

Eleanor Weber
Rules & Bulletins Division
Minnesota State Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

Dear Ms. Weber:

Thank you for sending a copy of the proposed emergency rule regarding home based mental health services. The rule has been modified to address many of our previous concerns. The one area which remains of significant concern is that the rule defines home based mental health services as ineligible for M.A. payment when a child is in a therapeutic foster home or in an ongoing placement in day treatment.

This is clearly problematic as we all have encountered cases in which the only way to successfully maintain a child's community placement and avoid return to residential treatment is through simultaneous ongoing provision of several treatment modalities. This could include day treatment, therapeutic foster home and home based therapy. In most such cases, the cost still remains significantly below the cost of out of home treatment.

The modification of rule that we would propose is to eliminate references to ineligibility and to make the simultaneous provision of such services possible only with prior authorization. This would keep financial control in the hands of DHS while recognizing that a case can be made, in keeping with the Children's Mental Health Act, for providing intensive, multiple services to some children in order to maintain a community placement. Proposed language modifications are enclosed in an appendix.

Another matter is that a small number of hours of home based services are allowed to overlap with hospitalization to allow for smooth discharge planning. We request that the same provision be allowed for discharge planning from group homes, residential treatment facilities, regional treatment centers or other institutional group settings. Again, proposed language is enclosed.

We are aware that there has been a significant reduction in the total number of eligible hours of service, both in the clinical and skill development area, since the first draft of this rule. It is

our understanding in the first draft, that clients would have been eligible for 3 hours of clinical services per day up to 80 days within a 110 day period. This represented a 240 hour level of clinical services for families. We are also aware that you have extended the period of time from 110 days to 6 months which we appreciate greatly. However, in the extension of the time length, the reduction of 240 clinical hours to 48 clinical hours represents an 80% reduction from the first draft. We believe that this does not adequately serve the types of families that will be referred to these programs and would recommend that the level for clinical hours including individual, family and multi-family therapy be doubled and that the group skills training remain the same. Proposed language is enclosed.

In addition to the actual clinical levels of service, we remain concerned about the need for prior authorization for co-therapy services with these more complex and difficult families. We also struggle with the appropriate language for the law and therefore do not have an actual suggested language by subpart, section, and line for your consideration. Two possible scenarios that we would encourage for you to consider might be as follows:

1) That co-therapy be available for a limited number of the total clinical hours without prior authorization. Example: If 96 hours were the total available clinical hours for a 6 month period, not more than 24 hours may be submitted as co-therapy without prior authorization. This would allow programs to periodically incorporate co-therapists for the more difficult families' family therapy sessions, or if they are providing multiple family groups.

or

2) That a reimbursement rate be structured such that there is not a financial incentive for the provider to provide co-therapy services, but also avoid having the provider shoulder the total financial burden when those services are judged as necessary. The reimbursement structure for co-therapy might be one and a half times the normal rate and would allow the provider the flexibility of delivering those services and receiving partial reimbursement for the co-therapy. This process would put the burden of financial and clinical decision making regarding co-therapy on the actual provider and would not require a prior authorization.

The above scenarios are offered as examples of providing co-therapy services without the need for a prior authorization request. It

has been our experience that many of the families requiring in-home family-based services represent families that experience multiple problems, multiple stressors, and require complex and sometimes intensive services. Often these services are best provided in a co-therapy context.

Thank you for your attention to these issues. These changes would significantly increase the flexibility of the system in responding to the needs of severely disturbed children.

Sincerely,

Dana Fox

Dana Fox, Ph. D.
Outpatient Program Director
Washburn Child Guidance Center

Joel Hetler (mh)

Joel Hetler, Ph.D.
Manager of Children's Mental Health
Ramsey County Human Services

Mark Kuppe (mh)

Mark Kuppe
Director of Family & Adolescent
Mental Health Services
Human Services, Inc., Washington County

DF:JH:MK/mh

Proposed Changes in the Emergency Rule Relating to Home Based Mental Health Services Under Medical Assistance

9505.0175, Subpart 43

Page 1, Line 16. *Stop at the words* "institutional group setting." *Delete* from "or a foster family home"....*to the end of Line 21.*

9505.0324, Subpart 6

Section J, Page 6, Line 32. *Add*: "Ongoing concurrent day treatment services and home based mental health services are eligible for medical assistance payment with prior authorization."

Section K, Page 7, Line 1. *After* "hospital", *add* "group home, residential treatment facility, regional treatment center or other institutional group setting."

Add "Section M. Home based mental health services provided to a child with severe emotional disturbance who is residing in a foster family home in which

A. the child is being provided therapeutic support of foster care as defined in Minnesota Statutes, section 245.4871, subdivision 34;

or

B. the foster parent is not the primary caregiver and does not reside with the child

are eligible for medical assistance payment only with prior authorization."

9505.0345, Subpart 6

Page 5, Section C, Line 17. *Change* 48 hours to 96 hours.

Page 5, Section D, Line 23. *Change* 240 hours to 288 hours.

Page 5, Section E, Line 26. *Change* 240 hours to 288 hours.

Page 5, Section E, Line 29. *Change* 240 hours to 288 hours.

Fax Transmittal Cover Sheet

Date: 9/4/91
Time: 1700

Fax to: Elaine Weber, DHS
296-6244

From: Stacy Remke
Phone 612/863-6246
Fax 612/863-6358

Number of pages (Including cover sheet): 3

Message:

Re: Proposed Emergency Rule for Home based hospital health services. Thanks!

RECEIVED
INFORMATION DESK
'91 SEP -5 A7:57

Minneapolis Children's Medical Center
a LifeSpan® member
2525 Chicago Avenue South
Minneapolis, Minnesota 55404

2525 Chicago Avenue South
Minneapolis, Minnesota 55404
Telephone: 612/863-6100
Fax: 612/863-6912

September 4, 1991

Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

Dear Eleanor,

I am writing to follow up on concerns I have re: the proposed Emergency Rule for Home based treatment of Medical Assistance eligible children.

Minneapolis Children's Medical Center
a LifeSpan® member

I provide home based mental health services to medically fragile children and their families, (ie: CAC clients and others). By the nature of these children's medical problems, they are usually home-bound, and their families' activities are dictated by their medical care. This lifestyle creates long term, catastrophic levels of stress. Emotional problems developing in these children and their family members is common.

In addition, it seem increasingly common for medically fragile children to be cared for in foster homes. Family reunification and family relationship issues are very complex. Also the complex system dynamics that result from the interface of nursing staff in the home, parents, and child can exacerbate underlying emotional distress to crisis proportions.

Given this population's complex and intensive needs, which include home bases mental health services, I am concerned about several points in the proposed rules. Firstly, the exclusion of services in foster homes. 3 children currently on my caseload have been in their respective foster home for over 3 years. They have no permanency plans in place, and their families see only very minimally involved. These children are home bound for significant periods of the day, and so this provision effectively excludes them from direct mental health services. This also puts these children at greater risk for multiple or sequential foster placements if their emotional and behavioral issues are unresolved.

Their families or foster families are at greater risk of becoming overwhelmed by the combination of emotional and medical care demands, without these services.

Secondly, I am concerned that in these children, the nature of their emotional or behavioral problems is frequently secondary to their medical problems. The stresses these impose on the child and his/her family, and adjustment to limitation imposed by their care or developmental potential are critical issues. The risk for out of home placement is usually attached to the medical situation, but emotional and behavioral problems can arise, and threaten the stability of the home, or foster, placement. These are critical issues to address for these children. The goal is to prevent out of home placements; and reduce numbers of hospitalizations as the result of these emotional or behavioral problems.

It is my impression, on reviewing the proposed emergency rules, that another population of children is being considered here. However, I would urge your committee to consider the special needs of this small, but complex and resource intensive population in your planning efforts. I would hope that any rules adopted allow some flexibility or provision so medically involved MA clients can receive mental health services at home, as this is often the most feasible route to accessing services for these kids and their families.

Please contact me if I can provide further information to your committee as your process progresses. Thank you for your consideration of these comments.

Sincerely,

Stacy S. Remke, LICSW
MCMC Home Care Program
863-6328

SSR/mcr
CFS-corr

2525 Chicago Avenue South
Minneapolis, Minnesota 55404
Telephone: 612/863-6100
Fax: 612/863-6912

Eleanor.
considered

September 4, 1991

Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

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Minneapolis Children's Medical Center
a LifeSpan® member

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Sincerely,

Stacy S. Remke, LICSW
MCMC Home Care Program
863-6328

SSR/mcr
CFS-corr

Department of Human Services

Proposed Emergency Amendments to Permanent Rules and Emergency Rules Relating to Professional Home-Based Mental Health Services

Rules as Proposed

9505.0175 DEFINITIONS.

[For text of subps 1 to 42, see M.R.]

Subp. 43. **Residence.** "Residence" means the place a person uses as ~~his or her~~ a primary dwelling place, and intends to continue to use indefinitely for that purpose. Residence is not a group home as defined by part 9560.0520, subpart 4, a residential treatment facility licensed under parts 9549.0900 to 9545.1090, an acute care hospital licensed under Minnesota Statutes, chapter 144, a regional treatment center or other institutional group setting, or a foster family home in which:

A. the child is being provided therapeutic support of foster care as defined in Minnesota Statutes, section 245.4871, subdivision 34; or

B. the foster parent is not the primary caregiver and does not reside with the child.

[For text of subps 44 to 50, see M.R.]

9505.0324 [Emergency] HOME-BASED MENTAL HEALTH SERVICES.

Subpart 1. **Definitions.** The terms used in this part have the meanings given them in items A to E.

A. "Child" means a person under age 21 who is eligible for early periodic screening, diagnostic, and treatment services under parts 9505.1693 to 9505.1748 and who has been determined to be in need of home-based mental health services.

B. "Child with severe emotional disturbance" refers to the term defined in Minnesota Statutes, section 245.4871, subdivision 6, and, in addition, to a person at least age 18 but under age 21 who has serious and persistent mental illness as defined in Minnesota Statutes, section 245.462, subdivision 20.

C. "Emotional disturbance" refers to the term defined

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in Minnesota Statutes, section 245.4871, subdivision 15, and, in addition, to a person at least age 18 but under age 21 who has a mental illness as defined in Minnesota Statutes, section 245.462, subdivision 20.

D. "Home-based mental health services" means a culturally appropriate, structured program of intensive mental health services provided to a child with severe emotional disturbance who is at risk of out-of-home placement because of an event or condition which exacerbates the child's severe emotional disturbance or who is returning from out-of-home placement because of the severe emotional disturbance. The services are for the purposes of resolving an acute episode of emotional disturbance affecting the child with the severe emotional disturbance or the child's family, reducing the risk of the child's out-of-home placement, or reunifying and reintegrating the child into the child's family after an out-of-home placement. The services are provided primarily in the child's residence but may also be provided in the child's school, the home of a relative of the child, a recreational or leisure setting, or the site where the child receives day care. For purposes of this part, home-based mental health services is used as a synonym for "professional home-based family treatment" in Minnesota Statutes, section 245.4871, subdivision 31.

E. "Individual treatment plan" has the meaning given in Minnesota Statutes, section 245.4871, subdivision 21.

Subp. 2. **Eligible providers of home-based mental health services.** The entities in items A to F are eligible to provide home-based mental health services:

A. outpatient hospitals licensed under Minnesota Statutes, section 144.50;

B. community mental health centers providing community mental health center services as specified in part 9505.0260;

C. an entity approved by the commissioner as specified in parts 9520.0750 to 9520.0870;

D. physician directed clinics as defined in part

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9505.0345, subpart 1, item A;

E. community health clinics under part 9505.0255; and

F. an entity operated by or under contract to the county to provide home-based mental health services.

Subp. 3. **Eligibility to receive home-based mental health services.** Home-based mental health services are available to a child who has been referred for home-based mental health services as a child with severe emotional disturbance who needs home-based mental health services. For purposes of the determination of a child's eligibility to receive home-based mental health services under this part, a diagnostic assessment as defined in Minnesota Statutes, section 245.4871, subdivision 11, in the case of a child under age 18 or a diagnostic assessment as defined in Minnesota Statutes, section 245.462, subdivision 9, in the case of a child at least age 18 but under age 21 is a screening under parts 9505.1693 to 9505.1748.

Subp. 4. **Eligibility for medical assistance payment.** To be eligible for medical assistance payment, the provider of home-based mental health services must meet the requirements in items A to E. The home-based mental health service provider must assist the case manager, if any, in coordinating other services to the child.

A. The services must be provided by mental health professionals and mental health practitioners who are skilled in the delivery of mental health services to children and their families.

B. The services must be designed to meet the specific mental health needs of the child and the child's family according to the child's individual treatment plan that is developed by the provider and that specifies the treatment goals and objectives for the child and the child's family.

C. The provider must provide, or assist the child or the child's family in arranging, crisis services for the child and the family of a child which must be available 24 hours per day, seven days a week.

D. The caseload of a home-based mental health service

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provider must be of a size that can reasonably be expected to enable the provider to meet the needs of the children and their families in the provider's caseload and permit the delivery of the services specified in the children's individual treatment plans.

E. The services must be coordinated with the child's case manager for mental health services if the child is receiving case management services.

Subp. 5. **Components of home-based mental health services.** A provider of home-based mental health services specified in subpart 2 must be capable of providing all of the components specified in this subpart. However, a provider is responsible to provide a component only if the component is specified in a child's individual treatment plan. The components are:

A. diagnostic assessment as specified in part 9505.0323;

B. individual psychotherapy, family psychotherapy, and multiple-family group psychotherapy as defined in part 9505.0323; and

C. individual, family, or group skills training that is designed to improve the basic functioning of the child with severe emotional disturbance and the child's family in the activities of daily and community living, and to improve the social functioning of the child and the child's family in areas important to the child's maintaining or reestablishing residency in the community. For purposes of this item, "community" means the child's residence, work, school, or peer group. The individual, family, and group skills training must:

(1) consist of activities designed to promote skill development of both the child with severe emotional disturbance and the child's family in the use of age-appropriate daily living skills, interpersonal and family relationships, and leisure and recreational services;

(2) consist of activities which will assist the family to improve its understanding of normal child development and to use parenting skills that will help the child with severe

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emotional disturbance achieve the goals outlined in the child's individual treatment plan; and

(3) promote family preservation and unification, community integration, and reduced use of unnecessary out-of-home placement or institutionalization of children with severe emotional disturbance.

Subp. 6. **Excluded services.** The services specified in items A to L are not eligible for medical assistance payment.

A. Home-based mental health services provided to a child who at the time of service provision has not been determined to be a child with severe emotional disturbance except for the first 30 hours of home-based mental health services provided to a child who is later determined to have a severe emotional disturbance.

B. More than 192 hours of individual, family, or group skills training within a six-month period.

C. More than a combined total of 48 hours within a six-month period of individual psychotherapy and family psychotherapy and multiple-family group psychotherapy except in an emergency and prior authorization or after-the-fact authorization of the psychotherapy is obtained under part 9505.5015.

D. More than 240 hours of a combination of any of the psychotherapies and individual, family, or group skills training within a six-month period.

E. Home-based mental health services that exceed 240 hours in any combination of the psychotherapies and individual, family, or group skills training. Additional home-based mental health services beyond 240 hours are eligible for medical assistance with prior authorization.

F. Psychotherapy provided by a person who is not a mental health professional as defined in part 9505.0175, subpart 28, or a mental health practitioner providing mental health services as specified in part 9505.0323, subpart 31.

G. Individual, family, or group skills training provided by a person who is not qualified, at least, as a mental

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health practitioner as specified in part 9505.0175, subpart 27, and who does not maintain a consulting relationship whereby a mental health professional accepts full responsibility and is present on-site at least every sixth day on which the mental health practitioner provides the individual, family, or group skills training to the child with severe emotional disturbance or the child's family. The on-site presence of the mental health professional must be documented in the child's record and signed by the mental health professional who accepts the full responsibility.

H. Home-based mental health services provided by an entity specified in subpart 2 if the entity is not capable of providing all the components required in subpart 4.

I. Home-based mental health services by more than one mental health professional simultaneously unless prior authorization is obtained.

J. Home-based mental health services to a child or the child's family which duplicate health services funded under part 9505.0323, grants authorized according to Minnesota Statutes, section 245.4886, the Minnesota family preservation act, Minnesota Statutes, section 256F.03, subdivision 5, paragraph (e), or the Minnesota Indian family preservation act, Minnesota Statutes, sections 257.35 to 257.3579. However, up to 60 hours of day treatment services under part 9505.0323 provided concurrently with home-based mental health services to a child with severe emotional disturbance are eligible for medical assistance payment if the child is being phased out of day treatment services and phased into home-based mental health services or if the child is being phased out of home-based mental health services and phased into day treatment services and the home-based mental health services are identified with the goals of the child's individual treatment plan.

K. Home-based mental health services provided to a child with severe emotional disturbance who is not living in the child's residence. However, up to 35 hours of home-based mental health services provided to a child with severe emotional

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disturbance who is residing in a hospital are eligible for medical assistance payment if the services are provided under an individual treatment plan for the child developed by the provider working with the child's discharge planning team and the services are needed to assure the child's smooth transition to living in the child's residence.

L. Home-based mental health services provided in violation of any provision of subparts 1 to 5.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Emergency Amendments to Permanent Rules and Emergency Rules Relating to Professional Home-Based Mental Health Services

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9505

The attached rules are approved for publication in the State Register

Paul E. Rohde

Paul E. Rohde
Senior Assistant Revisor