STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

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

STATEMENT OF NEED AND REASONABLENESS

Statutory Authority

Rule 12 (12 MCAR §§2.0120-2.0129) has been developed in response to the specific legislative directive contained in M.S. 245.73 (Laws of 1981, Chapter 360, Article II, Section 14) Subdivision 4, "The Commissioner shall promulgate a temporary and permament rule to govern grant applications, approval of applications, allocation of grants, and maintenance of service and financial records by grant recipients."

This rule replaces DPW Temporary Rule 1 and continues the implementation of the new grant program established by M.S. 245.73 to assist residential facilities in meeting licensure requirements under DPW Rule 36.

Introduction and Background:

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

State hospital daily census figures clearly indicate the effects of this shift toward deinstitutionalization. In 1962, the mentally ill population of Minnesota's state mental institutions numbered 8,709. By January, 1982, this figure had dropped to 1,349; less than 16% of the 1962 total. However, although the hospital populations have decreased substantially, the number of persons still needing mental health services have not. What began as a humanitarian effort has evolved into a tragedy for many, due to the hundreds of mentally ill persons who have been forced to reside in substandard community facilities which offer little or no mental health care and treatment.

By appropriating $4.9 million, by establishing a new grant program and by directing that this rule be written, the Legislature has recognized the need to bring existing community residential facilities up to a minimum level of both program and physical plant standards. Rule 12 will enable these new funds and any additional funds appropriated in the future to be granted to county boards so that residential facilities will now be able to comply with licensing standards.

In 1981, Temporary Rule 1 was developed by the Department of Public Welfare with considerable assistance from an advisory task force which included representatives from county boards, county social service agencies, county mental health agencies, mental health centers, residential facilities, University research staff, and advocate groups (see list of members attached). After careful discussion, this task force developed a consensus as to the best methods for implementing this new legislation.

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

Need and Reasonableness - Section by Section

Section 2.0120 provides for flexibility in the methods of service provision and ensures that, whichever methods the county board does decide to use to provide the service, the use of funds will still be covered by this rule.

In Section 2.0121.B., the definition of adult duplicates the definition in M.S. 645.45. It is included here because most residential facilities which might receive funds under this rule do not have easy access to statute books and, if they did, they might not be aware of M.S. 645.45. "Adult" is popularly thought of as referring to age 16 in some circumstances, 18 in others, 19 in others, and 21 in yet other circumstances. With this one line specifying "age 18", this rule will accurately communicate legislative intent, prevent a great deal of confusion, and simplify the requirements for many people. The definition of adult is important for this rule, since the authorizing statute limits funds to services for adult mentally ill persons.

In Section 2.0121.C.-D., the definitions of Commissioner and county board allow use of these abbreviations throughout the rule. Including "duly designated representative" recognizes the fact that most of the functions assigned in the rule to either the Commissioner or the county board are, in reality, usually assigned to subordinates.

In Section 2.0121.E., the definition of mentally ill person is the same as the definition used in the revised DPW Rule 36. This allows for consistency between the two rules. It is necessary to define a mentally ill person specifically for this rule because the authorizing statute limits funds to services for adult mentally ill persons. This definition is essentially also the same as the one used for Temporary DPW Rule 29.

Section 2.0122.A., provides for deadlines for applications to be set by the Commissioner. This is reasonable and necessary to ensure an orderly and workable grant review process.

Section 2.0122.B., incorporates the statutory priority for facilities operating on July 1, 1980 (M.S. 245.73, Subdivision 2) and adds additional priorities which will be applied after all applications meeting the statutory priority are funded. The priorities shown are consistent with testimony provided when the authorizing legislation and the appropriation were being discussed at legislative hearings. These priorities also reflect the intent of the citizens' advisory task force which assisted the Department in drafting revised DPW Rule 36.

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

Section 2.0122.C., provides for special consideration for the Rochester State Hospital area. This recognizes that quality community care in that area may be particularly urgent and necessary due to the closing of Rochester State Hospital. Since the word "consideration" rather than "priority" is used, the Commissioner will be able to use his discretion in deciding whether an application from the Rochester area does, in fact, present greater needs than applications from other areas of the state. The phrase "for the biennium ending June 30, 1983" is an addition to Temporary Rule 1. Since there have been other state institutions closed in the past and there may be more in the future, there would be no point in providing permanent special consideration just for the Rochester area.

Section 2.0122.D., recognizes that, even with the priorities laid out in 2.0122.B., there may still be difficult situations where the Commissioner will have to apply additional consideration to determine which facilities will receive the limited funds appropriated. Section 2.0122.D. specifies the criterion to be used in that process. The Department and the advisory task force considered alternative criteria for this section and settled on "appropriateness within the statewide continuum of care" as being the most important and the most practical as far as the ability of reviewers to judge.

Section 2.0122.E., embodies the basic legislative intent of this appropriation, i.e., to assist residential facilities to attain and maintain licensure standards under DPW Rule 36. This section sets forth realistic time lines within which licensure will have to be attained. In Temporary Rule 1, this section also included a provision for unforeseeable circumstances. That concept is now included, in expanded form, in Section 2.0128.C.

Section 2.0122.F. brings together the other sections of the rule by making it clear that approval of applications and budgets will be based on compliance with the requirements of this rule. The last line of 2.0122.F. recognizes the fact that the Legislature has appropriated a limited amount of funds for this program and that, even if an applicant meets the other requirements of this rule, approval may not be possible if there are insufficient funds.

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

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

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

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

Section 2.0123.G. requires that the evaluation provisions in M.S. 245.73, Subdivision 4, be implemented at the local level. (Section 2.0127.B. of this rule requires evaluation data to be submitted to the state so that evaluation can also be done at the state level.) The statute indicates that the criterion for evaluation at the state level is "effectiveness of the services in helping adult mentally ill persons remain and function in their own communities." For the state level evaluation to be effective, it is necessary for the same type of evaluation to be first carried out at the local level. Also, it is reasonable to assume that, since the Legislature intended that this evaluation criterion be used in the state report back to the Legislature, that it was also intended that county boards refer to the same criterion.

Section 2.0123.H. is an addition to Temporary Rule 1 to recognize the fact that the permanent rule will also cover facilities previously funded under this rule. If there are problems with a facility's previous grant, it is reasonable to address those problems before awarding another grant.

Section 2.0124.A. defines what must be included in the budget which is required by M.S. 245.73. It specifies that the budget must represent <u>cash</u> transactions as opposed to in-kind transactions. (In-kind transactions, such as the "cost" of volunteer time, donated supplies, etc., are included under a few other grant programs.) It is the Department's interpretation that the term "County's cost" in M.S. 245.73, Subdivision 3, was intended to mean cash transactions in the manner provided in 2.0124.A.

The requirement in 2.0124.A. to have separate budgets for each facility is necessary for meaningful grant review and subsequent monitoring. This will also be useful later in presentations to the Legislature as far as the amounts and types of costs involved in getting facilities licensed. The Department expects that each facility will have very different needs. To allow one budget for all facilities in a county would bury these differences and make it impossible to determine whether funds would really be used to attain licensure standards.

Sections 2.0124.B.-F. define the following budget terms which are used in the authorizing legislation: room and board costs, direct service costs; in addition, these sections create and define the following terms which are implied by the authorizing legislation: previously funded program costs and other new program costs. Since these budgetary terms interrelate so closely and since a key aspect of the definitions is that these terms represent individual, mutually exclusive parts of the total budget (as stated by 2.0124.B.), the body of the rule is a more appropriate place for these definitions, rather than the definition Section 2.0121.

Another key aspect of these budget terms is the differentiation between "previously funded" and "new", with the dividing line being June 1, 1981. These terms are necessary to implement M.S. 245.73, Subdivision 2, which requires that "funds shall not be used to supplant or reduce local, state or federal expenditure levels supporting existing resources..." It is the Department's interpretation that "existing" means as of the date the authorizing legislation was signed, i.e., June 1, 1981. The Department considered the alternative interpretation, "existing at the time of application", and concluded that that interpretation would act as an incentive to counties to not allow any new funding for these facilities until the county could obtain a grant under this new program. This was clearly not the intent of this legislation.

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

In 2.0124.E.-F., the differentiation is made between direct service and other program costs. This is necessary to implement the requirement in M.S. 245.73, Subdivision 2. that the state funds be used for direct service costs only. Section 2.0124.E. defines direct service costs in the same way as is done in DPW Rule 14.

Even though this new grant program will only be for new program costs, Section 2.0124 requires the facility's entire budget to be shown; this is necessary for grant reviewers to be able to monitor whether costs have been properly allocated to the various budget categories. It is common for grant applicants in general to try to allocate costs in such a way as to place as much as possible of the grant applicants' total costs into the

budget category to be funded under the grant. With the requirement for the entire budget to be shown and the additional requirement to provide an explanation for the allocation of indirect costs (2.0124.G.), inappropriate cost allocations and "double-funding" can be controlled.

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

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

Section 2.0124.H. implements the exception provided for in M.S. 245.73, Subdivision 2: "Funds shall not be used to supplant... existing resources unless the reduction in available monies is the result of a state or federal decision..."

Section 2.0124.I. is similar to cost-control provisions in DPW Rule 49 and is in response to legislative and public concerns to limit costs to reasonable levels wherever possible.

Section 2.0124.J. provides for county board flexibility as far as a starting and ending date for the grant applied for, as long as the dates are within the time period provided in the appropriation. In some cases, this will enable a county to begin spending its local matching funds even before a grant is approved, thus allowing for earlier compliance with licensing requirements. In other cases, this will enable a county to request a grant for less than a full fiscal year; this may be necessary for new programs which will not be ready to start at the beginning of a state fiscal year.

Section 2.0124.K. is a commonly accepted item usually included as part of a residential facility budget under other funding programs. It enables the grant reviewers to judge the reasonableness of each facility's costs on a more comparable basis with other facilities.

Section 2.0125 allows counties flexibility as to combinations of counties, numbers and types of service providers, and combinations of service providers to be used under this grant program. At the same time, Section 2.0125 insures that lines of accountability will be maintained.

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

Section 2.0125.c. is necessary to insure that funds will be used only for residential facilities, as required by the authorizing legislation. The exception under 2.0125.F.2. allows for payments to be made directly to another service provider if the residential facility agrees. This is included for those instances where the service provider will provide services required under DPW Rule 36 for residents of the facilities, but the service will not be provided by the facilities themselves; and where it may

be more practical and efficient for funds to flow directly from the county to the service provider. The required agreement by the residential facility should help insure that funds get used only for residents of that facility.

In order to provide counties and facilities maximum flexibility under the law, 2.0125.F. is intentionally silent as to the type of service provider which could be used. The service provider could even be the county itself, if agreed to by the facility. Agreement by the facility is essential because, under the licensing statute (M.S. 245.781), it is the facility, not the county, which is held accountable for compliance with licensing standards. Therefore, the facility should have some control over the methods used for that facility to attain licensure.

Section 2.0126.A. combines the two statutory requirements that: 1) state funds be used for direct service costs only (M.S. 245.73, Subdivision 2); and 2) that state funds pay for 75% of the county's costs, including both direct service and other costs, as approved by the Commissioner (same statute, Subdivision 3). Subdivision 3 is a general provision providing for a 75% overall participation rate. Subdivision 3 refers to Subdivision 2 for the particular requirements, one of which is the requirement for using state funds for direct service only. Note that there is no expectation that state funds will always pay for all direct service costs. In fact, Subdivision 2 specifically allows for the local share to also be used for direct service costs.

One implication of 2.0126.A. is that, in some cases, i.e. where the direct service costs are less than 75%, the grant will be less than 75%. This will seemingly be in conflict with Subdivision 3; but it will be reasonable and legally correct under M.S. 645.26, Subdivision 1, which calls for particular provisions to prevail over conflicting general provisions.

Another possible situation under 2.0126.A. would be the case where the grant equals 75% of the total county costs, but is less than the direct service costs. This would comply with both subdivisions and would not conflict with the special provisions of Subdivision 2. Subd. 2 does not require that the grant pay for <u>all</u> direct service costs.

Section 2.0126.B. relates back to the 2.0124.A. requirement for separate budgets for each facility. 2.0126.B. recognizes that, partially due to the requirement that state funds be used for direct service only, some counties may have to, or wish to, place more than 25% local funding in certain facilities. Section 2.0126.B. will allow the county the flexibility to count the "extra" local match at one facility towards the local match requirement for another facility. This flexibility is within the scope of M.S. 245.73, Subdivision 3, which relates the 75% to "the county's cost", not each facility's cost.

Section 2.0126.D. states how income, other than state and county matching funds under this rule, may be used. Since some projects will be able to earn some fee income, it is necessary to establish in the rule the basis for allocating this revenue in relation to the state and local funds committed to these facilities.

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

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

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

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

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

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

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

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

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

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

Section 2.0129.A. and C. allow for funds to be reallocated if they are clearly not needed for a particular facility. It is reasonable to assume that the Legislature intended that the entire appropriation be used and, if there are enough acceptable applications, to use the appropriation properly. It is also reasonable to authorize the Commissioner to reallocate unused funds to achieve this purpose.

Section 2.0129.B. provides for the extreme situation where the Commissioner would determine that funds are not being used appropriately, and the county board would not agree with that determination. This section allows for a grant to be terminated upon reasonable (30 days) notice, with full appeal provisions. The authority for this can be found in M.S. 245.73, Subdivision 3, which states that "Grants... shall finance 75% of the county's costs... as provided in Subdivision 2", and Subdivision 2, which states that grants are to be made only for "applications and budgets approved by the Commissioner". This means that grants are not to be used for costs which are not approved by the Commissioner. Therefore, if the Commissioner did find that the funds were being used for unapproved costs, it would be his duty to take corrective action. Section 2.0129.B. provides for a specific form of corrective action to be available to the Commissioner to use.

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