

IN THE MATTER OF THE PROPOSED  
RULE OF THE DEPARTMENT OF  
HUMAN SERVICES GOVERNING  
GRANTS FOR COMMUNITY-BASED  
MENTAL HEALTH SERVICES FOR  
CHILDREN WITH SEVERE EMOTIONAL  
DISTURBANCE AND THEIR FAMILIES,  
AND GOVERNING GRANTS FOR  
COMMUNITY SUPPORT AND CASE  
MANAGEMENT SERVICES FOR ADULTS  
WITH SERIOUS AND PERSISTENT  
MENTAL ILLNESS, MINNESOTA RULES,  
PARTS 9535.1700 TO 9535.1760

MINNESOTA DEPARTMENT  
OF HUMAN SERVICES

STATEMENT OF NEED  
AND REASONABLENESS

#### INTRODUCTION

This proposed rule combines the Department's Emergency Rule 78 governing grants for community-based mental health services for children with severe emotional disturbance, parts 9535.1700 to 9535.1765 [Emergency], with the Department's Rule 14 governing grants for community support and case management services for adults with serious and persistent mental illness, parts 9535.0100 to 9535.1600.

#### BACKGROUND

In 1979, the legislature enacted the Community Social Services Act, codified in Minnesota Statutes, chapter 256E. The Act combined a number of previously separate mental health grants into one social services block grant to counties. However, mental health advocates were concerned that the needs of persons with serious and persistent mental illness would not be addressed in the block grant. In response to those concerns, the same legislation that created the Act also authorized Rule 14 grants and appropriated \$1,000,000 for the first grants. The original Rule 14 (promulgated in 1980) is the same rule that is now proposed to be replaced by this proposed rule.

In 1987, the Minnesota Comprehensive Adult Mental Health Act (Minnesota Statutes, §§245.461-245.486) was enacted. With this act, Minnesota laid out an array of mental health services to be provided in all areas of the state. Along with this act, the legislature appropriated sufficient funds to expand Rule 14 from a demonstration program in 45 counties to a statewide program. The Minnesota Comprehensive Adult Mental Health Act required case management and community support services to be provided in every county by 1989.

Due to calls from children's mental health advocates for development of a comprehensive, appropriate and accessible mental health system for children, in 1989 the Minnesota

Comprehensive Children's Mental Health Act (Minnesota Statutes, §§245.487-245.4888) was enacted.

The Act mandated the phase-in of an array of mental health services for children by 1992. The key to development of this array is coordination among service agencies in the provision of services to children and families on the state and local level.

The Act also established three target children's populations eligible to receive mental health services: (1) all children (for emergency services, education and prevention, early identification and intervention); (2) children with emotional disturbance (for outpatient services, acute care hospital services, and residential treatment services); and (3) children with severe emotional disturbance (for screening, professional home-based family treatment, case management, family community support services, day treatment, and therapeutic support of foster care). It is the latter group of children that this proposed rule focuses on.

The Department received the first biennial plans for children's mental health services from counties for FY 1990-91; first funding for services was awarded in February 1991 to 52 counties for the 15 month period from April 1, 1991 to June 30, 1992 (the end of FY 1992). The second round of funding was awarded in March 1992 to 86 counties (one county did not apply) for the 15 month period from April 1, 1992 to June 30, 1993 (the end of FY 1993).

#### **Combined Rulemaking Process**

Because Emergency Rule 78 and the proposed updates to Rule 14 both establish standards for the receipt and distribution of state grants to counties for mental health services, in January, 1992 the Department decided to combine the rules for this rulemaking procedure. Thereafter, a Notice of Solicitation of Outside Information or Opinions was published on February 3, 1992 at 16 *State Register* 1828.

The proposed combined rule language establishes standards for the receipt and distribution of state grants to assist counties to establish, operate, or contract for the delivery of both community-based mental health services to children with severe emotional disturbance and their families and community support and case management services for adults with serious and persistent mental illness. The combined rule will: require that counties receive the commissioner's approval of grant applications; define criteria for grant approval; define criteria for the use of grant funds; require that applications describe how the county board is collaborating or will collaborate in the development, funding and delivery of services

with other agencies; define criteria for grant distribution; define budget requirements; specify requirements for fiscal reporting; specify grant payments to county boards; allow the commissioner to terminate all or part of the grant funds and require repayment; allow the commissioner to reallocate returned or unused grant funds; and require counties and contracting service providers to maintain financial and client service records.

The proposed combined rule was developed in consultation with an Advisory Committee, which met on February 24, 1992. Members of the Advisory Committee included: county representatives, the Minnesota Association of Community Mental Health Programs, the Wilder Foundation, advocates and the Department. Invitations had also been sent to: the Mental Health Law Project, the Mental Health Association, the State Advisory Council on Mental Health, the National Association of Social Workers, the Minnesota Nurses Association, Minneapolis Family & Children's Services and ARC Minnesota. The proposed rule incorporates the committee members' suggestions.

A brief history and statutory authority of each rule follows.

#### **Emergency Rule 78**

In 1991, in Minnesota Statutes, §245.4886, subdivision 1 (Laws of Minnesota 1991, chapter 292, article 6, section 26), the legislature directed the Department to "establish a statewide program to assist counties in providing services to children with severe emotional disturbance . . . and their families." This program, consisting of state grants to counties for community-based mental health services for children with severe emotional disturbance and their families, is authorized by Minnesota Statutes, §245.4886, subdivision 2, which provided for emergency rulemaking authority.

Emergency Rule 78 governing children's community-based mental health services was published at 16 *State Register* 1591, and on December 27, 1991 it became effective. Part of this proposed combined rule converts this emergency rule into permanent rule language.

On January 13, 1992 at 16 *State Register* 1689, a Notice of Solicitation of Outside Information or Opinions was published. In February, a Rule Advisory Committee met; this was discussed in the section entitled "Combined Rulemaking Process," above.

Language regarding community-based mental health services for children and their families is specifically authorized by Minnesota Statutes, §245.4886, subdivision 2, which provides permanent rulemaking authority to the Department. Other

relevant statutes are: Minnesota Statutes, §245.484 (the commissioner shall adopt permanent rules as necessary to carry out sections . . . 245.487 to 245.4888); Minnesota Statutes, §245.487, subdivision 4 (the commissioner shall . . . fully implement sections 245.487 to 245.4888 by July 1, 1993); Minnesota Statutes, §245.4873, subdivision 5 (the commissioner shall supervise the development and coordination of locally available children's mental health services by county boards); Minnesota Statutes, §245.4874, clause (1) (county boards must develop a system of locally available and affordable children's mental health services); and Minnesota Statutes, §245.4875, subdivision 7 (county boards shall perform other acts necessary to carry out the Minnesota Comprehensive Children's Mental Health Act).

#### **Proposed New Rule 14**

Minnesota Statutes, §256E.12, subdivision 1 requires the commissioner to "establish a statewide program to assist counties in providing services to persons with serious and persistent mental illness . . . ." This law directs the commissioner to:

make grants to counties to establish, operate, or contract with private providers to provide services designed to help persons with serious and persistent mental illness remain and function in their own communities.

Minnesota Statutes, §256E.12, subdivision 3 authorizes the commissioner to promulgate rules to establish standards for the receipt and distribution of state grants to assist counties to establish, operate, or contract for the delivery of community support and case management services for persons with serious and persistent mental illness.

On May 6, 1991 at 15 *State Register* 2413, a Notice of Solicitation of Outside Information or Opinions was published. Thereafter, the Department established a Rule 14 Advisory Committee and held committee meetings. Proposed language was developed in consultation with this committee, which contained representatives from counties, the Mental Health Law Project, the Mental Health Association, the State Advisory Council on Mental Health, other advocates and the Department. The proposed language incorporated their suggestions.

The proposed language considered by the Advisory Committee was to have replaced current Rule 14, parts 9535.0100 to 9535.1600 (Community Support Services for Chronically Mentally Ill Persons). The current combined rulemaking process likewise repeals these rule parts and replaces them with parts 9535.1700

to 9535.1760 as they apply to adult community support and case management services.

Rule 14 is specifically authorized by Minnesota Statutes, §256E.12, subdivision 3, which provides rulemaking authority to the Department. Other relevant statutes are: Minnesota Statutes, §245.462, subdivision 6 (requires community support services programs to be coordinated with case management services); Minnesota Statutes, §245.463, subdivision 2 (requires the commissioner to provide ongoing technical assistance to counties to develop the adult mental health component of the community social services plan); Minnesota Statutes, §245.464, subdivision 1 (requires the commissioner to supervise the "development and coordination of locally available adult mental health services" by county boards); Minnesota Statutes, §245.465, subdivision 1, clause (1) (requires county boards to "develop and coordinate a system of affordable and locally available adult mental health services" in accordance with the Minnesota Comprehensive Adult Mental Health Act) and clause (3) (requires county boards to provide case management services to adults with serious and persistent mental illness); Minnesota Statutes, §245.466, subdivision 6 (requires county boards to "perform other acts necessary to carry out" the Minnesota Comprehensive Adult Mental Health Act); Minnesota Statutes, §245.4711, subdivision 1 (county boards must provide case management services); and Minnesota Statutes, §245.4712, subdivision 1 (county boards must provide or contract for "sufficient community support services within the county to meet the needs of adults with serious and persistent mental illness . . . .").

Besides Minnesota Statutes, §256E.12, subdivision 3, rulemaking authority is found in Minnesota Statutes, §245.484.

Because the Department combined proposed new Rule 14 with proposed permanent Rule 78, the Department did not publish a Notice of Intent to Adopt for Rule 14. Combining the language of Rule 14 with Rule 78 created new numbering and different language, and so in February, 1992 the past members of the Rule 14 Advisory Committee (who were made a part of the combined Rule Advisory Committee) reviewed new language. This combined proposed rule fully takes into account the ideas and suggestions of the Combined Rule Advisory Committee.

#### SPECIFIC RULE PROVISIONS

The above-entitled rule is affirmatively presented by the Department in the following narrative in accordance with the provisions of the Minnesota Administrative Procedure Act, Minnesota Statutes, chapter 14 and the rules of the Attorney General's Office.

9535.1700 PURPOSE.

Particularly as this is the first time rules concerning mental health service grants for children and their families and for adults have been combined, it is necessary to provide context for affected persons governing the content of this rule. It is reasonable to state the general purpose of this rule; that is, that it establishes standards for the receipt and distribution of state grants both for children's community-based mental health services and for adult community support and case management services.

This language says in a nutshell what the language in current Rule 14, part 9535.0300 says in protracted fashion.

9535.1705 DEFINITIONS.

Subpart 1. Scope.

It is necessary and reasonable to state that the terms used throughout the rule are defined in Minnesota Statutes, §§245.462 and 245.4871, so that there is no need to restate definitions in rule. However, for the specific terms that are not statutorily defined or that need precise clarification in rule, it is reasonable to define them in subparts 2 through 4.

Subpart 2. Children's community-based mental health services.

It is necessary to define this term as it is used throughout the rule to explain what type of state grants part of this rule governs. It is reasonable to use the language of Minnesota Statutes, §246.4886, subdivision 1: "The commissioner shall establish a statewide program to assist counties in providing **services to children with severe emotional disturbance . . .** and their families." (emphasis added). The statute then lists the types of services:

- ▶ family community support services;
- ▶ case management services;
- ▶ day treatment services;
- ▶ professional home-based family treatment; and
- ▶ therapeutic support of foster care.

Subpart 3. County funds.

It is necessary to define this term as it is used in part 9535.1735, subpart 1. The definition used is reasonable because the funds specified in the definition are those that are available only to the county (county levies) or passed through

to the county from other sources (block grants, family preservation grants, or state revenues distributed in lieu of property taxes or other revenue sharing).

Subpart 4. Grant period.

This definition is necessary as the term is used in parts 9535.1725 and 9535.1740, subpart 3. The application form provided by the Department specifies the grant period covered by the application; thus, the application submitted by a county board is for a specific grant period identified by the commissioner. Therefore, the definition is reasonable as it is consistent with the Department's practice and the information provided to county boards.

9535.1710 ELIGIBILITY TO RECEIVE GRANT

This part is necessary to comply with Minnesota Statutes, §§245.4886, subdivision 2 and 256E.12, subdivision 2. It is reasonable to provide that only county boards that submit and receive the commissioner's approval for the grant application may receive grants to provide mental health services because both Minnesota Statutes, §§245.4886 and 256E.12 state that the "commissioner shall make grants only to counties whose applications and budgets are approved by the commissioner."

9535.1715 GRANT APPLICATION.

Subpart 1. Application for grants.

This subpart requires counties, whether singly or as part of a joint effort, to submit to the commissioner a grant application, including budget information, in the manner prescribed and on forms provided by the commissioner. This language is taken from current Rule 14, part 9535.0800, subpart 2 and is necessary and reasonable to comply with Minnesota Statutes, §§245.4886, subdivision 2 and 256E.12, subdivision 2, which state that "[T]o apply for a grant a county board shall submit an application and budget for the use of the money in the form specified by the commissioner."

It is necessary and reasonable to provide that two or more counties may act together to submit an application because state law encourages joint county efforts. Minnesota Statutes, §§245.464, subdivision 1 and 245.4873, subdivision 5 state that the commissioner "shall supervise the development and coordination of locally available" adult and children's mental health services by county boards. Minnesota Statutes, §245.4873, subdivision 5 continues by stating that the "commissioner shall provide technical assistance to county

boards in developing and maintaining locally available and coordinated children's mental health services." Minnesota Statutes, §245.465, subdivision 1, clause (1) requires county boards to "develop and coordinate a system of affordable and locally available adult mental health services." Minnesota Statutes, §§245.466, subdivision 4 and 245.4875, subdivision 4 provide that "counties are encouraged to . . . enter into multicounty mental health agreements." Finally, Minnesota Statutes, §256E.08, subdivision 1 provides that, in regards to community social services, a county board or "in combination with other county boards" shall prepare a social services plan, a potential source of funding for children's community-based mental health services (see Minnesota Statutes, §256E.03, subdivision 2, paragraph (a), clause (5)) (emphasis added throughout).

This subpart also requires that beginning with calendar years 1994 and 1995, the grant application must be a part of the county board's biennial community social services plan. This is necessary because the Department is simplifying procedures, including community social services plans, whenever possible, in order to comply with Minnesota Statutes, section 256E.05, subdivision 1a (authorizes the commissioner to review social services administrative rule requirements and adopt amendments by eliminating unnecessary or excessive paperwork and simplifying or consolidating program requirements). For example, the Department has been awarding grants for community-based mental health services for children with severe emotional disturbance on a fiscal year basis, but because this rule combines two types of mental health grants, it is administratively easier for both the state and counties to award grants based on the timelines of a county's community social services planning process, a biennial activity.

It is necessary to exclude grant applications for special projects from a county's biennial community social services plan because special projects are typically funded for only one year on a fiscal year basis, dependent on what the legislature mandates. Other agencies or organizations may also require that special projects are funded on a fiscal year basis. Therefore, it is reasonable to exclude special projects from subpart 1.

Subpart 2. County board signature or copy of approving resolution.

Subpart 2 requires that a grant application must be either signed by the chair of the county board or accompanied by a copy of the county board's resolution. If two or more county boards apply for a state grant, the chair of each board must either sign the application or submit a copy of their respective county board's resolution. This language is lifted from current Rule 14, part 9535.0800, subpart 3.



This language is necessary to clarify the evidence required to assure that the grant application submitted to the commissioner has the approval of the county board(s). A copy of the county board's approving the submission resolution is reasonable evidence because it shows the vote of the county board's commissioners; further, submitting a copy of the resolution is the current practice of many county boards. Certainly, the signature of the chair of the county board is also reasonable evidence because the chair is authorized to carry out such functions on behalf of the board.

Requiring the chairs of each of the county boards making a joint application to provide evidence of approval is reasonable because it ensures that each county board has authorized the joint application and approved its contents.

#### 9535.1720 FUNDING CRITERIA.

This part contains the criteria for a grant application. Grant applications are necessary pursuant to Minnesota Statutes, §§245.4886, subdivision 2 and 256E.12, subdivision 2, which provide that in order to apply for a grant, the "county board shall submit an application and budget . . . in the form specified by the commissioner." Further, both statutes authorize the commissioner to adopt permanent rules to govern approval of applications and allocation of grants.

Item A. It is reasonable that the county's grant application be consistent with the respective mental health component of its community social services plan approved by the commissioner because the mental health component of the county's social services plan specifies how the county board will meet its statutory obligations to provide mental health services. Furthermore, this requirement is reasonable as the county's social services plan has been reviewed and determined by the commissioner to meet the requirements of the Minnesota Comprehensive Adult Mental Health Act or the Minnesota Comprehensive Children's Mental Health Act. See Minnesota Statutes, §§245.478, subdivision 3 and 245.4888, subdivision 1.

Item B. It is reasonable to require that the grant application describe how the county board is collaborating or will collaborate in the development, funding, and delivery of children's community-based mental health services with other agencies in the local system of care in order to comply with Minnesota Statutes, §245.4886, subdivision 2. Also, Minnesota Statutes, §245.4874, clause (5) states that the county board must

coordinate the delivery of children's mental health services with services provided by social services, education, corrections, health, and vocational agencies to improve the availability of mental health services to children. . . ."

Item C. This item requires that the grant application must comply with the rest of the rule and with Minnesota Statutes, §§245.461 to 245.4888. This is necessary to set a standard for receiving the commissioner's approval of the grant application. Requiring compliance with applicable law and rules is reasonable because these laws and rules are the established standards, and affected persons have had the opportunity to become knowledgeable regarding the standards. Additionally, the use of standards assures equitable treatment of all county boards applying for state grants.

Item D. Subitem (1).

It is necessary and reasonable to require that in the grant application, the county board agree that it considered what Minnesota Statutes, §§245.466, subdivision 5 and 245.4875, subdivision 5, paragraph (c) require; that it consider the advice of its local children's or adult mental health advisory council or the children's or adult mental health subcommittee of the existing local mental health advisory council "in carrying out its authorities and responsibilities."

Item D. Subitem (2).

This is necessary and reasonable for the same reasons as in subitem (1). Further, it was recommended by a member of the Emergency Rule 78 Advisory Committee, and is reasonable to ensure that in grant applications, the county board will consider the advice of the specific mental health advisory council or mental health subcommittee of the existing mental health advisory council if the grant application is amended.

Item D. Subitem (3).

This is necessary to incorporate the recommendation of a member of the Emergency Rule 78 Advisory Committee. Pursuant to Minnesota Statutes, §§245.462, subdivision 12 and 245.4871, subdivision 19, individual (family) community support plans are written plans identifying specific services needed by the client that are developed by case managers and the client and (in the case of children with severe emotional disturbance) by case managers, the family, and the child. Therefore, it is reasonable that grant applications indicate that counties will provide the needed services identified in the client's community support plan.

Item D. Subitem (4).

It is necessary to require that the funding sources identified in units (a) to (g) be used to pay for mental health services instead of grant funds when these funds are available in order to comply with Minnesota Statutes, §§245.466, subdivision 1 and 245.4875, subdivision 1, which state that county boards are responsible for using "all available resources" to provide mental health services.

Unit (a). This is necessary and reasonable to comply with Minnesota Statutes, §§245.4711, subdivision 1, paragraph (b) (case management services for adults with serious and persistent mental illness eligible for medical assistance must be billed under §256B.0625); 245.4886, subdivision 1 (the commissioner shall make grants to counties to provide children's community-based mental health services when "these cannot be reimbursed under section 256B.0625"); and 256E.12, subdivision 1 (grants received may be used to fund community support and case management services "that cannot be billed to the medical assistance program under . . . . 256B.0625").

Unit (b). This is necessary and reasonable to comply with Minnesota Statutes, §§245.466, subdivision 1 and 245.4875, subdivision 1, which require that county boards are responsible for using "all available resources" to provide mental health services.

Unit (c). This is necessary and reasonable for the same reasons as unit (b).

Unit (d). This is necessary and reasonable for the same reasons as unit (b).

Unit (e). This is necessary and reasonable for the same reasons as unit (b).

Unit (f). This is necessary and reasonable for the same reasons as unit (b).

Unit (g). This is necessary to comply with Minnesota Statutes, §§245.466, subdivision 1 and 245.4875, subdivision 1, discussed above. It is possible that units (a) to (f) do not cover all the possible available resources; therefore, it reasonable to list "other funds" here to catch those not already listed. Examples of "other funds" for adult community support and case management services include private contributions and federal money. See Minnesota Statutes, §256E.12, subdivision 2.

Item D. Subitem (5).

It is necessary and reasonable to require county boards to agree that the cost per unit of service will be comparable to the cost of similar services in the same or similar local trade area in order to conserve public (i.e., state) funds and to maximize public funds' availability to pay for services which are not reimbursable through other funds.

Item E. Subitems (1) and (2).

It is necessary and reasonable that the grant application state that grant funds will be used for the services specified in Minnesota Statutes, §§245.4886 and 256E.12 in order to comply with these statutes, which mandate certain mental health services.

Item E. Subitem (3). Grant funds may also be used for other mental health services, necessary because these are services the commissioner determines essential. Examples of such "other services" are: diagnostic assessment; functional assessments; medication management; psychological diagnosis; and transportation. It is reasonable that grant funds also provide for these services (but only if the resources listed in item D, subitem (4) cannot be tapped) because such services are essential to helping the client remain and function in the community. This subitem is taken from current Rule 14, part 9535.0900, subpart 3.

The last paragraph of this subitem is necessary in order to ensure that counties receive grants if the commissioner determines that a grant application merits funding but does not meet the criteria of this rule. Requiring the commissioner to point out what needs to be corrected in the grant application under such circumstances is a reasonable method of ensuring that needed and available grants are distributed to counties.

9535.1725 DISTRIBUTION FORMULA.

This rule part governs the formulas that will be used to distribute state grants for mental health services. The authority for the following items is Minnesota Statutes, §§245.4886, subdivision 2 and 256E.12, subdivision 3, which permit the commissioner to adopt permanent rules to govern "allocation of grants."

The following items are necessary to provide a minimum baseline and a uniform method for the statewide distribution of funds.

Item A. It is necessary to require that state grants are distributed "within the limits of the appropriations under

Minnesota Statutes, section 245.4886 or 256E.12" in order to comply with Minnesota Statutes, §§245.486, which provides that nothing in either the Minnesota Comprehensive Adult Mental Health Act or the Minnesota Comprehensive Children's Mental Health Act "shall be construed to require the commissioner or county boards to fund services beyond the limits of legislative appropriations."

The formulas in item A are reasonable because they allow the commissioner to consider three possible funding methods so that the commissioner can choose that which will grant a county the greatest amount of state dollars. Subitem (1) provides for funding at previous levels (plus a cost of living increase if appropriated by the legislature) to maintain existing projects without considering a county's demographics or service needs; subitem (2) is a method to provide minimum mandated services for small counties; and subitem (3) provides an equitable method of allocating funds according to a county's population. It is reasonable to require the per capita amount be based on the population as determined by the state demographer because the demographer has the responsibility of keeping county population data current and accurate.

As already discussed, current Rule 14 began as a demonstration program in 1980. Over the years with increasing county budgets the program was expanded. When the Minnesota Comprehensive Adult Mental Health Act was enacted in 1987, included was a requirement that by the beginning of FY 1989 all counties had to provide a Community Support Service Program (CSP).

Appropriations were funded for the twelve month period beginning in FY 1989. Based on the appropriations, the original formula for CSP grants was set at \$1.00 per capita (per county allocation) with a minimum of \$25,000 annually per county. The \$25,000 minimum was chosen because it funded at least one position per county. For FY 1990, the formula was increased to \$1.65 per capita or a minimum of \$41,000 annually per county. This \$41,000 figure is reflected in subitem (2). Those counties that were a part of the original demonstration program that were above the allocation minimum maintained funding at the previous year's amount, reflected in subitem (1).

For this proposed combined rule, the current practice of having the Rule 14 formula based on total county population is changed to be based on the county adult population. In order to accommodate this change and still allocate at least the same amount of funds, the per capita amount in subitem (3) is increased to \$2.10. If this change should result in a lower per capita allocation for any county, subitem (1) ensures that no county will receive less than its current allocation.

In developing formulas for distribution of grants for children's community-based mental health services (Emergency Rule 78), the same general approach was taken: The allocation formula was based on a per capita approach with a minimum per county. The Rule 78 rates for the per capita amount in subitem (3) of \$2.25 are higher than those for Rule 14 because there are fewer children under 18 years of age than adults. The \$22,000 minimum in subitem (2) is based on the amount of legislative appropriations and is the amount that can fund most of one position in the smaller counties.

Item B. It is necessary to clarify that the state grants distributed under item A, subitem (1) do not include the special project funds of part 9535.1730 because special project funds are distributed for special needs which may not apply to all counties. Therefore, it is reasonable to exclude special project funds from grant fund allocation formulas that apply to all counties receiving annual appropriations.

However, in some cases it is necessary and reasonable to include a special project grant in the formula allocation. Normally, this would occur as a special project moves out of a pilot or demonstration phase into on-going service provision. In such a case, if the commissioner determines the special project is best funded as part of the general allocation for mental health services, the special project grant will be included in the formula allocation and will increase a county's base for all future allocations. Granting the commissioner the authority to determine when a special project is best funded as part of the allocation for mental health services is reasonable because the legislature has authorized the commissioner to approve and award grants pursuant to Minnesota Statutes, §§245.4886, subdivision 2 and 256E.12.

Item C. It is necessary to clarify that if the appropriations for mental health services are increased, the amounts in item A, subitems (2) and (3) shall be increased. In other words, if the commissioner receives an additional appropriation from the legislature, the commissioner must increase the formulas in subitems (2) and (3). This is a reasonable method of providing additional mental health services.

Item D. Likewise, it makes sense that if the appropriations for mental health services are decreased, then the allocations in item A shall be decreased in the same proportion as the appropriations decrease, thus ensuring a constant ratio distribution of state grant funds.

Item E. This item is reasonable because it assures that, if the legislative appropriations remain the same as last year's appropriations, no county loses funds nor incurs a possible reduction in mental health services. To ensure that no count

loses funds nor incurs a possible reduction in mental health services, it is necessary to add that the county allocations must not be adjusted to reflect any new population data of the state demographer.

Item F. Item F is necessary to allow flexibility for cooperating counties to divvy up grant funds to best meet the needs of the multicounty region. This item is consistent with the Department's intent to allow counties freedom to decide how best to meet the "outcome" stated in Minnesota Statutes, §§245.4886 and 256E.12 to have clients function and remain in their communities. It is reasonable, then, to allow grants to be dispersed among cooperating counties as counties best see fit, as long as the counties demonstrate to the commissioner that the differences are based on the different service needs of each county.

#### 9535.1730 FUNDING SPECIAL PROJECTS.

This part is necessary to provide a means for distributing state appropriations for special projects. This part allows county boards to apply to the commissioner for grants appropriated for special projects, which must provide at least one of the statutorily mandated mental health services (see the definition of children's community-based mental health services in Minnesota Statutes, §246.4886, subdivision 1 and the definitions of case management services and community support services in Minnesota Statutes, §245.462, subdivisions 3 and 6) unless the legislature enacts appropriations for a "different service."

It is reasonable to allow appropriations to be used for projects, events, or circumstances that may not have been anticipated in long range county plans because the funding is intended to provide county boards with flexibility to respond to an emergency or emerging social or economic issue that affects the ability of adults with serious and persistent mental illness to remain and function in the community, or affects the ability of children with severe emotional disturbance to remain and function with their families in the community.

Examples of special projects are:

- ▶ housing support services for adults with serious and persistent mental illness
- ▶ assistance in transition from homelessness
- ▶ mental health crisis services for adults and children

- ▶ coordinated employability services for persons with serious and persistent mental illness

Stating that special project grants must be "within the limits of appropriations available" is necessary and reasonable for the reasons covered in part 9535.1725, item A on pages 12 - 13.

9535.1735 BUDGET REQUIREMENTS.

This part is necessary to inform affected persons of the required budget information that is included as part of the grant application.

Subpart 1. Estimated budget required.

This subpart requires county boards applying for mental health services grants to submit to the commissioner a grant application that includes budget information. It is necessary to include budget information because such information allows the commissioner to make an informed decision regarding grant awards.

County boards may contract with providers to provide mental health services. Minnesota Statutes, §§246.4886, subdivision 1 and 256E.12, subdivision 1 authorize the commissioner to make grants to counties to "establish, operate, or contract with private providers" to provide mental health services. Additionally, Minnesota Statutes, §§245.466, subdivision 1 and 245.4875, subdivision 1 allow counties to contract "with other individuals or agencies." Therefore, it is necessary to place in this rule language covering instances of contracting or subcontracting service providers.

Items A to J are necessary to provide documentation to the commissioner that the county board considered all possible sources of projected revenue for mental health services when budgeting for mental health services. See Minnesota Statutes, §§245.466, subdivision 1 and 245.4875, subdivision 1, discussed at part 9535.1720, item D, subitem (4). It is reasonable that a county board consider sources of funding both from the state and from other sources in order to submit to the commissioner an accurate grant application.

Items A, C to F and I - J have been discussed at part 9535.1720, item D, subitem (4) on page 11. It is reasonable for the same reasons discussed there to require a county board to also consider the projected revenue it will receive from county funds (item B) (defined in part 9535.1705, subpart 4 as funds available through county levies, state block grants, federal block grants, family preservation grants, and state revenues distributed in lieu of property taxes or other revenue sharing).



Item G. County agencies may also provide funding for services by way of a local system of care, which is defined at Minnesota Statutes, §245.4871, subdivision 24 as the following locally available services: mental health, social services, correctional services, education services, health services, and vocational services. Further, Minnesota Statutes, §245.4874, clause (5) requires that county boards

coordinate the delivery of children's mental health services with services provided by social services, education, corrections, health, and vocational agencies....

Minnesota Statutes, §245.465, subdivision 1, clause (1) requires county boards to "develop and coordinate a system of affordable and locally available adult mental health services," and Minnesota Statutes, §245.464, subdivision 1 requires the commissioner to "supervise the development and coordination of locally available adult mental health services by the county boards . . . ." (emphasis added). Therefore, requiring county boards to look at projected revenue from "other public agencies" is necessary to comply with state law.

Item H. Item H is necessary because Minnesota Statutes, §§245.466, subdivision 1 and 245.4875, subdivision 1 require that county boards are responsible for using "all available resources" to provide mental health services. It is possible that items A to G do not cover all the possible available resources; therefore, it is reasonable to add "other sources" to catch those not already listed.

Subpart 2. Submittal of contracting service provider budgets.

As discussed in subpart 1, a county board may contract with private providers to provide mental health services and is authorized by law to do so. Requiring a county board to submit to the commissioner specific information on the county board's contracting, or subcontracting, service provider's budget is a reasonable method of assuring the commissioner that the use of state grants complies with the purpose authorized by the legislature and administered by this rule.

Subpart 3. Provider contracts and subcontracts.

This subpart requires that all contracts for mental health services between a county board and a service provider, or all contracts between a contracting service provider and a subcontracting service provider, be in accordance with the requirements of this rule and the Department's rule governing the administration of community social services, informally known as Rule 160.

Rule 160's administration of community social services includes mental health services. It provides detail for grants and purchase of service contracts between counties and service providers, including subcontractors. A cite to Rule 160 is necessary so that the same requirements apply to all county boards when contracting with service providers for community social services. Incorporating the requirements of Rule 160 is reasonable as it enables the commissioner to uniformly follow the requirement in Minnesota Statutes, §§245.4886, subdivision 2 and 256E.12, subdivision 3 to review data and require periodic reports as necessary.

It is reasonable to simply cite to Rule 160 rather than repeat its provisions for administrative efficiency. Additionally, this subpart ensures that the line of responsibility for service delivery is maintained between county boards and service providers.

#### Subpart 4. Joint applications.

Subpart 4 provides that when two or more county boards apply jointly for grants for mental health services, they must designate which county board will act as the host county to receive the grant and must designate a contact person.

The Statement of Need and Reasonableness for part 9535.1715, subpart 1 on pages 7 - 8 discusses in detail the statutory language that encourages two or more counties to apply jointly for state grants.

It is necessary that county boards applying jointly have an agreement designating which county is to receive the state grant for ease in administration, and necessary that county boards applying jointly designate a county contact person should questions arise. It is reasonable to place these requirements in rule so that affected persons have advance knowledge of these requirements.

#### Subpart 5. Matching funds required for grants for adult community support and case management services.

This subpart is taken from current Rule 14, part 9535.1100 and is necessary to comply with Minnesota Statutes, §256E.12, subdivision 2, which requires that counties

receiving a grant under this section shall finance at least ten percent of the cost of services for persons with serious and persistent mental illness from local resources, which may include private contributions and federal money.

It is reasonable to define "matching funds of at least ten percent" as "revenue from the sources listed in subpart 1, items B to H" because Minnesota Statutes, §§245.466, subdivision 1 and 245.4875, subdivision 1 require that county boards use "all available resources" to provide mental health services. This definition of "matching funds" is also reasonable because it expressly includes private contributions and federal money, as specified in Minnesota Statutes, §256E.12, subdivision 2.

9535.1740 PAYMENT TO COUNTY BOARD.

Subpart 1. Fiscal reports.

This subpart is necessary to comply with Minnesota Statutes, §§245.482, subdivision 1 and 245.4886, subdivision 2, and reasonable to use their language: "The commissioner shall specify requirements for reports, including quarterly fiscal reports, according to section 256.01, subdivision 2, paragraph (17)." Additionally, Minnesota Statutes, §245.482, subdivision 2 requires the commissioner to "develop a unified format for quarterly fiscal reports that will include information the commissioner determines necessary . . . ." and requires county boards to submit to the commissioner completed fiscal reports.

It is reasonable that if the state, through the commissioner, distributes state grants for mental health services, then reports are necessary in order to make sure that state funding is appropriately used.

This subpart also requires that the county board submit, by service provider, a year-end summary of the total expenditures and total revenues by revenue sources if the commissioner requests such data. This provision is necessary to assist the commissioner in obtaining a more complete understanding of service provider and county board finances. Service providers may receive reimbursement from private insurance, third party payors, or medical assistance in addition to grant monies pursuant to this combined rule. Requiring information on year-end total expenditures and total revenues, upon request by the commissioner, is a reasonable means of ensuring appropriate use of state monies. Requiring such information only upon the request of the commissioner is reasonable as it avoids placing an undue burden on all service providers.

Subpart 2. Grant payments.

This subpart is necessary to inform affected persons of when grant payments will be disbursed. It is reasonable to require the commissioner to make quarterly grant payments and require the commissioner to make an initial advance in an amount sufficient to cover the period between the beginning of the

grant period and the next scheduled payment because counties need operating monies and the commissioner may then monitor ongoing expenditures in a timely and orderly manner.

Minnesota Statutes, §245.482, subdivision 2 requires county boards to submit quarterly fiscal reports. Therefore, it is reasonable that the commissioner make subsequent quarterly grant payments on a reimbursement basis for actual expenditures as this method assures the state grant is used to purchase the approved mental health services and provides the commissioner a way to monitor the county board's implementation of its approved state grant application and budget.

This subpart is also necessary to clarify that total payments to county boards will not be more than the lesser of the following, made according to an approved budget: (1) the grant award; or (2) 90% of the actual expenditures under Minnesota Statutes, §256E.12 (for adults with serious and persistent mental illness); or (3) 100% of the actual expenditures under Minnesota Statutes, §245.4886 (for children with severe emotional disturbance). It is reasonable to use the wording and intent of Minnesota Statutes, §256E.12, subdivision 3, which authorizes the commissioner to allocate grants "to finance up to 90 percent of each county's costs . . . ." and Minnesota Statutes, §245.4886, which implicitly authorizes a payment for 100% of actual expenditures.

However, there are situations where county boards submit expenditure reports for more than the grant award. In this instance, total payment may not exceed the grant award. For example, a county board may receive a grant for \$41,000 to provide adult community support and case management services. Assuming the county contributes \$8,200 in other resources, the total budget is \$49,200. If this county spends \$49,200 for mental health services and submits an expenditure report of \$49,200, it is necessary that the state allow payment of only the grant award (\$41,000), not 90% of actual expenditures, which in this instance would be \$44,280.

### Subpart 3. Disposition of additional income.

This subpart is necessary to clarify what county boards must do if revenue is received which exceeds the amount of revenue estimated in their approved budgets. The clarification provided is reasonable to prevent duplicate payment for services funded by this proposed rule.

The combined rule allows county boards the flexibility to choose which one of the three items to follow. It is reasonable to allow counties a choice because they are in the best position to know the mental health services needs of county residents.

Item A. Item A allows county boards to use the additional income to provide more mental health services within the grant period. This is reasonable because counties may decide that such additional services are needed.

Item B. Item B allows county boards to use the additional income in place of the county board funds committed to mental health services, if a county board's total mental health expenditure, after the reduction in county funds, complies with the maintenance of effort provisions in Minnesota Statutes, §245.48. This is reasonable because it encourages the provider to operate in a cost effective and efficient manner and to seek out all funding sources, thereby maximizing the use of county funds for services without other funding sources.

Item C. This item requires the county board to annually notify the commissioner regarding the excess revenue and request the commissioner to authorize the transfer of some or all of these additional funds to the next grant period. If so, the commissioner shall either authorize the transfer or adjust the subsequent grant award by an amount equal to the excess revenue.

This is reasonable because it recognizes the transfer or carry over of the excess funds to another grant period, permits expenditures to be made in an orderly manner, avoids a possible scenario of "spend rather than lose," and encourages county boards to look for all possible funding sources.

#### 9535.1745 TERMINATION AND REPAYMENT OF FUNDS.

This part is necessary and reasonable to comply with Minnesota Statutes, §245.483, subdivision 1, which states that if the commissioner finds that a county is not meeting the requirements of Minnesota Statutes, §§245.461 to 245.4888 (upon which this rule is based), "all or part of the mental health and community social service act funds may be terminated upon 30 days notice to the county board." Minnesota Statutes, §245.483, subdivision 1 further provides that the commissioner may require repayment of any funds not used according to the county's approved grant application.

It is also reasonable to require consistency in termination and/or repayment of state grants from one county to another.

#### 9535.1750 REALLOCATION OF GRANT FUNDS.

This part taken from current Rule 14, part 9535.0700, subpart 3, is necessary to comply with Minnesota Statutes, §245.483, subdivision 2, which allows the commissioner to "reallocate the funds returned." It is reasonable to alert counties that

returned or unused grant funds for mental health services may be reallocated by the commissioner to "other eligible county boards as a supplemental allocation . . . or for special projects," so that county boards know that state grants not being used as specified in the approved grant application may be routed to other counties. This helps ensure, to the extent it is possible, that the full appropriation of funds enacted by the legislature is used to provide needed mental health services.

Using reallocated funds for special projects is reasonable as it assists a county board to meet emergencies or new issues that were not present when its application was approved by the commissioner. Using the funds for special projects will not affect the county's ongoing service costs.

It is necessary to define "unused grant funds" to clarify that these funds are either grant funds not awarded by the commissioner to a county board or grant funds awarded but not used by a county board. This is consistent with departmental use of the term in current Rule 14, part 9535.0700, subpart 3.

#### 9535.1755 BUDGET AMENDMENTS.

This part requires that county boards amending the budget approved by the commissioner follow the procedures laid out in Minnesota Statutes, §§245.478, subdivision 9 or 245.4888, subdivision 9 for amending the adult or children's mental health component of a county's community social services plan.

It is necessary that some means be provided in rule to allow for unforeseen changes in a county's mental health service needs (resulting in the need for an amended component of the community social services plan), and it is reasonable to provide criteria for obtaining approval of budget amendments in order to prevent arbitrary decisions regarding approval or disapproval.

Requiring the county board to demonstrate a need to change services based on an assessment of unmet needs of children with severe emotional disturbance and their families, or adults with serious and persistent mental illness, is reasonable because it is consistent with the purpose of state grants for mental health services: To assist counties in providing mental health services to children with severe emotional disturbance and their families, and to adults with serious and persistent mental illness. See Minnesota Statutes, §§245.4886, subdivision 1 and 256E.12, subdivision 1.

In addition, Minnesota Statutes, §256E.081 is referenced because it includes additional clarification regarding statutorily mandated services and county maintenance of effort requirements. These requirements may affect budget amendment decisions and

therefore must be considered as part of any budget amendment in order to ensure compliance with state law.

9535.1760 RECORDS.

Subpart 1. Maintenance of financial records.

This subpart is taken from current Rule 14, part 9535.1200 and is necessary to comply with Minnesota Statutes, §§246.4886, subdivision 2 and 256E.12, subdivision 3, which authorize the commissioner to adopt rules to govern maintenance of financial statements by grant recipients.

Item A. This item is reasonable as it allows the commissioner the opportunity to review whether state grants for mental health services are being used for the purposes stated in the approved grant application. Comparing expenditures for these services to the county board's approved budget allows the commissioner to assess whether the intent of Minnesota Statutes, §§245.4886 and 256E.12 to provide mental health services is being met.

Item B. It is reasonable that records from all sources of income are readily identifiable so that county boards comply with part 9535.1735, subpart 1 (a county board's budget must show the total projected revenue from available sources).

Item C. It is reasonable that all expenditures are documented, as this is the customary method of maintaining financial statements. Documents can then be produced should the commissioner have a question or concern.

Subpart 2. Maintenance of service records and required reporting.

This subpart takes its language from current Rule 14, part 9535.1400, subpart 2, which requires county boards and all contracting or subcontracting service providers to maintain data specified by the commissioner on the mental health services funded, in order that the commissioner may determine the effectiveness of the services in achieving the statutory purpose for each service. The subpart also requires that county boards submit periodic reports in the manner prescribed and on forms provided by the commissioner.

This subpart is necessary to comply with Minnesota Statutes, §§245.4886, subdivision 2 and 256E.12, subdivision 3, which state that the "commissioner shall require collection of data and periodic reports" the commissioner deems necessary "to demonstrate the effectiveness" of the mental health services in realizing their purpose.

For children with severe emotional disturbance, the purpose of the children's community-based mental health services listed in Minnesota Statutes, §245.4886, subdivision 1 is "to help each child to function and remain with the child's family in the community." For adult community support and case management services, the purpose of the services is to help "persons with serious and persistent mental illness remain and function in their own communities." Minnesota Statutes, §256E.12, subdivision 3.

It is reasonable to require county boards to use the process administered by the commissioner as a standard process to assure comparability of data from the various county boards. It makes sense to require submission of periodic reports by county boards so that the commissioner may determine the effectiveness of services in achieving their stated purpose.

There is no fiscal impact to the requirement that county boards submit periodic reports because this requirement is no more stringent than current requirements and because the cost of preparing these reports is an eligible expense for the grants funded under this proposed rule.

#### Subpart 3. Availability and access.

As in subpart 2, this subpart is necessary to comply with Minnesota Statutes, §§246.4886, subdivision 2 and 256E.12, subdivision 3. As noted above, these statutes require the commissioner to "require collection of data and periodic reports" the commissioner deems necessary. If the commissioner must require data collection and periodic reports, it is reasonable that the commissioner have access to them, by having access to the physical plant and grounds of contracting or subcontracting service providers.

By allowing access to the physical plants and grounds of contracting and subcontracting service providers, and to documents and other relevant information, the commissioner can monitor the use of the mental health grants and evaluate whether the grant funds were properly spent. If the funds were improperly spent, the commissioner may then follow parts 9535.1745 (termination and repayment of funds) and 9535.1750 (reallocation of grant funds). The same reasoning applies to the language allowing the commissioner to make photocopies, photographs, and audio and videotape recordings.

The commissioner has the right to receive only documents and information relevant to mental health services specified in this rule in order to determine whether or not the services are effective in helping adults and children remain and function in their own communities. Further, the provisions of Minnesota Statutes, chapter 13 (the Minnesota Government Data Practices



Act) must be met in order to protect the privacy of the people receiving mental health services.

Subpart 4. Retention of records.

This subpart is necessary to provide a uniform standard for retention of records.

The proposed record retention requirements are reasonable as they conform to the standard department requirement for record retention. Allowing records to be retained on computers, on computer disks, and on microfilm is reasonable because this is the standard county and service provider practice.

REPEALER. Parts 9535.0100 to 9535.1600 are repealed because this rule encompasses the language of these parts in an updated form.

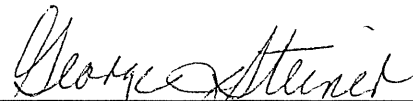
EXPERT WITNESSES/SMALL BUSINESS

If this rule is heard in public hearing, the Department does not intend to have outside expert witnesses testify on its behalf. Because the proposed rule relates to county administration of a state program, the proposed rule does not affect small businesses as defined in Minnesota Statutes, §14.115.

AGRICULTURAL LAND

The proposed rule amendments do not have a direct or substantial adverse effect on agricultural land as defined in Minnesota Statutes, §17.81, subdivision 3 and referenced in Minnesota Statutes, §14.11, subdivision 2.

Dated: 6-12-92



NATALIE HAAS STEFFEN  
Commissioner