

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

DPW Ex #6

RECEIVED
DEC 12 1977
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE EARLY AND PERIODIC SCREENING, DIAGNOSIS AND TREATMENT PROGRAM, RULE 61

AFFIDAVIT OF MAILING

Jacqueline Sue Wierstad, being first duly sworn, deposes and says:
That on the 5th day of December, 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Jacqueline Sue Wierstad

Subscribed and sworn to before me this
5th day of December, 1977

Notary Public,

Ramsey County, Minnesota

My Commission expires Sept 22, 1984

Margaret Holt

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

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE EARLY AND PERIODIC SCREENING AND DIAGNOSIS AND TREATMENT PROGRAM, RULE 61

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in the Veterans Service Building, Room D, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota, 55155, on January 9, 1978, commencing at 8:30 A.M. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Peter Erickson, Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota, 55105, (612) 296-8118, either before the hearing or within five working days after the public hearing ends, or for a longer period not to exceed 20 days if ordered by the hearing examiner.

The Early and Periodic Screening, Diagnosis and Treatment Program is designed to provide early and periodic screening and diagnosis of individuals who are eligible for Medical Assistance and who are under the age of 21 to ascertain their physical or mental abnormalities, and to provide health care, treatment, and other measures to correct or ameliorate problems discovered. Proposed Rule 61, if adopted, would specify the conditions under which providers may participate in the EPSDT Program and delineate the requirements which local welfare agencies must follow to administer the EPSDT Program. Provisions of the proposed rule cover introduction; definition of terms; eligibility; physician screening standards; nurse screening standards; periodicity schedules (intervals at which children should be screened); conditions of screening providor participation in the EPSDT Program; conditions of diagnosis and treatment, providor participation in the EPSDT Program; and local welfare agency responsibilities.

Copies of the proposed rule are now available and one free copy may be obtained by writing to Ms. Lori Davidson, EPSDT Section, Minnesota Department of Public Welfare, Fourth Floor, Centennial Office Building, St. Paul, Minnesota, 55155, (612) 296-2631. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rule is contained in Minn. Stat. § 256B. A "statement of need" explaining why the agency feels the proposed rule is necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minn. Stat. Chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rule making by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155 phone number (612) 296-5615.

EDWARD J. DIRKSWAGER, JR.
Commissioner

Dated: November 2, 1977

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

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DEC 7 1977
OFFICE OF HEARING
EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE EARLY AND PERIODIC SCREENING, DIAGNOSIS AND TREATMENT PROGRAM, RULE 61

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the Veterans Service Building, Room D, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota, 55155, on January 9, 1978, commencing at 8:30 A.M. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

Edward J. Dirkswager, Jr.
Commissioner

Date: Nov 23, 1977

ADOPTED rule

EXHIBIT B

DPW 61 Early and Periodic Screening, Diagnosis and Treatment

A. Introduction

This rule governs the administration of the Early and Periodic Screening, Diagnosis and Treatment Program (hereinafter referred to as the EPSDT Program). This program is mandated by Section 1905(a)(4)(B) of the Social Security Act.

The purpose of the EPSDT Program is to identify potentially handicapping conditions in children eligible for Medical Assistance, to provide diagnosis and treatment for conditions identified, and to encourage the entrance of children into the health care system.

Note: It is the intention of the Department, in order to ensure effective delivery of EPSDT services, that parents be involved with the child throughout the screening, diagnosis and treatment process. However, since the program includes "children" through age twenty, the Department recognizes that some children, including teenagers and adults who are eighteen through twenty, may be able to supply requested information themselves and may not wish to have their parents involved in the screening process. To allow for such cases, references in this rule are made to "parent/child". In using this language, the Department intends that health providers and local welfare agencies involve the parent whenever possible in the program, but also recognize the right of the child to privacy.

B. Definitions

1. Child: For purposes of this rule, any individual from birth through twenty years of age who is eligible for Medical Assistance.

2. Commissioner: The Commissioner of Public Welfare.

3. Department: The Department of Public Welfare.

4. Diagnosis: Determination of the nature or cause of physical or developmental disease or abnormality through the use of health history, physical, developmental, and psychological examination, laboratory tests and x-rays.

5. EPSDT Equivalent Clinic: A facility which provides screening services according to Minnesota Department of Health EPS standards, provides follow-up services, and is monitored by the Minnesota Department of Health. Such facilities provide comprehensive care in a sequence incompatible with the completion of the EPSDT billing form.

6. EPSDT Provider Agreement: An agreement between a provider of screening services and the Department that the provider, in order to qualify for Medical Assistance reimbursement, will screen each Medical Assistance child according to the appropriate screening standards specified in Section D of this rule, will report all findings on the EPSDT billing form, and will refer children according to procedures specified in Section G.2. of this rule.

7. Follow-up: Efforts by local agencies to ensure that the screening, diagnosis and treatment services needed by a child are obtained.

8. Local agency: The county welfare board, multi-county welfare board, or human service agency established in accordance with state law and responsible for the administration of the EPSDT Program at the county level.

9. Medical Assistance: Program authorized under Title XIX of the Social Security Act to provide medical care for individuals whose resources do not enable them to purchase such care.

10. Minnesota Department of Health-Approved EPS Clinic: An agency which provides screening services according to Minnesota Department of Health screening and administrative standards, which operates under the supervision of a registered nurse, public health nurse, or pediatric/family nurse practitioner, and which qualifies for Medical Assistance and other public third party reimbursement.

11. Nurse-Supervised EPSDT Clinic: A facility or individual which provides screening services according to Minnesota Department of Health screening standards and Department of Public Welfare administrative standards. Such clinics operate under the supervision of a registered nurse, public health nurse, or pediatric/family nurse practitioner, and qualify for Medical Assistance reimbursement.

12. Outreach: Efforts by the Department or local agencies to inform and encourage persons to avail themselves of services which they might not otherwise request without such assistance.

13. Periodic: At regular, fixed intervals established for screening by health care experts to assure that disease or abnormality is not incipient or has not appeared since the child's last evaluation.

14. Physician-Supervised EPSDT Clinic: A facility or individual which provides screening services according to physician screening standards, which operates under the supervision of a licensed physician, and which qualifies for Medical Assistance reimbursement.

15. Screening: The use of quick, simple procedures to sort apparently well children from those who need more definitive study of possible physical or developmental problems.

16. Treatment: The use of medical care and services to prevent, correct or ameliorate disease or abnormalities detected by screening and diagnostic procedures.

C. Eligibility

1. All persons from birth through age twenty who are eligible for Medical Assistance are eligible for the EPSDT Program.

2. Eligibility for the EPSDT Program terminates when Medical Assistance eligibility terminates, regardless of the child's status in the EPSDT process.

D. Physician Screening Standards

A licensed physician must provide the following components in order for an examination to be reimbursed as a screening under the EPSDT Program.

1. Health History: A health and developmental history must be obtained from the child, the parent, and/or another responsible adult who is familiar with the child's health history and must include information on lead and tuberculosis exposure, nutrition intake, and seizure history.

2. Assessment of Physical Growth: The child's height and weight must be measured and compared with the ranges considered normal for children of that age. Head circumference measurements must be taken for children under three years of age.

3. Physical Examination: The following areas must be checked according to accepted medical procedures: pulse, respiration, blood pressure, head, eyes, ears, nose, mouth, pharynx, neck, chest, heart, lungs, abdomen, spine, genitals, extremities, joints, muscle tone, skin, and neurological examination.

4. Dental Inspection: The mouth must be examined for any obvious dental problems. A child who is three years of age or older must be referred to a dentist for preventive care if she/he has never been to a dentist or if it has been one year since the last dental appointment.

5. Vision:

   a. Children under the age of three years:

      (1) Must be checked for a history of:

         (a) Maternal and/or neonatal infection.

         (b) Family history of ocular abnormalities.

      (2) Must be observed for:

         (a) Pupils and light following reflex.

         (b) Presence/absence of nystagmus.

         (c) Muscle balance - examination for esotropia, exotropia, large phorias.

         (d) External examination of eyes, including lids, conjunctiva and cornea.

         (e) Parental concern regarding child's vision.

   b. Children over the age of three years:

      (1) Must be checked for all of the items contained in Section D.5.a.

      (2) Must, in addition, be checked for visual acuity. A test such as the STYCAR, the Snellen E Cube, the Snellen E Chart, and the Snellen Alphabet Chart, or their equivalent, must be used.

6. Hearing:

a. Children under the age of three years must be observed for:

(1) Retardation of language acquisition or history of such retardation.

(2) Failure to directionalize to sounds.

(3) History of repeated otitis media during early life.

(4) Parental concern regarding child's hearing.

b. Children over the age of three years:

(1) Must be observed for all of the items contained in Section D.6.a. (1) through (4) above.

(2) Must receive a pure tone audiometric test or referral for pure tone audiometric testing if items (1) through (4) above indicate the need for audiometric testing.

7. Developmental Screening:

a. For children ages birth through five years, the Denver Prescreening Developmental Questionnaire (PDQ) must be completed. All children who fail the PDQ must be screened further by use of the Denver Developmental Screening Test (DDST). If the screener does not provide the DDST, referral must be made to an agency that does provide it.

b. For children ages six through twenty years, the provider must screen for the following areas according to his/her standard procedures: fine/gross motor development, speech, and socialization. Developmental questions must be included on the health history for this age group.

8. Sexual Development:

a. Sexual development appropriate to the child's age must be checked for all children, with special emphasis given to children who have reached puberty.

b. At the request of the parent/child, counseling on normal development, birth control and venereal disease, as well as appropriate prescriptions and testing, must be provided by the screener, or referral to appropriate resources must be made.

c. The option to receive a pelvic examination with appropriate testing (GC, Pap Smear, other tests at provider's discretion) must be offered to all females who have reached puberty.

9. Nutritional Status:

a. A child having any detectable nutritional deficiencies must receive nutritional counseling or must be referred for such counseling.

b. When a child's history reveals that his/her diet regularly lacks two or more daily servings from one of the four basic food groups, the parent/child must receive nutritional counseling or must be referred for nutritional counseling even if there are no objective signs of poor nutrition.

10. Immunizations: The immunization status of all children must be checked. Needed immunizations must be offered and provided if requested. Immunizations must be administered according to the Recommended Schedule of Immunizations developed by the Minnesota Department of Health and approved by the Minnesota State Medical Association.

11. Laboratory Tests:

a. Tuberculin Testing: Must be performed for all children once at fifteen months of age or at their first screening, if this screening occurs later than fifteen months. A child may receive additional tuberculin testing at later ages if his/her history indicates the possibility of exposure.

b. Lead Absorption Testing: Must be performed on all children whose history and physical findings indicate the possibility of exposure to undue levels of lead in the environment or atmosphere.

c. Urine Testing: All children over the age of two years must be tested at their first screening for the presence of glucose, ketones, protein and other abnormalities in the urine. Females (at or near the ages of four and ten) must be tested for bacteriuria.

d. Anemia Testing: All children must be tested for anemia by use of either a microhematocrit determination or a hemoglobin concentration. This test should be done near the ages of six months, one year, two years, four years, and fifteen years.

e. Sickle Cell Testing: Tests for sickle cell disease or trait must be offered to all children known to be at risk and must be provided if requested by the parent/child. Only one sickle cell test is needed. If sickle cell trait is found, parent/child must be referred for genetic counseling if they so desire.

f. Other Laboratory Tests: Tests for cervical cancer, venereal disease, pregnancy and parasites should be performed when indicated and charged as part of the screening examination.

12. Variation From Screening Procedures: If a provider wishes to substitute other procedures for those contained in Section D.1. through D.11., or wishes to omit any of the required procedures, written application must be made to the EPSDT Section in the Department. All such requests shall be reviewed by a Physician Advisory Committee and a decision on the request shall be made by the Committee, in writing within 30 days of the receipt of the request.

E. Nurse Screening Standards

The Department will recognize as screening providers all nurse-supervised EPS and EPSDT clinics which follow the screening standards and periodicity schedule devised by the Minnesota Department of Health. Screenings performed by these providers will be reimbursed under the EPSDT Program.

F. Periodicity Schedule

1. The Department will offer all children who have been screened the opportunity for re-screening at the following ages: six months, nine months, one year, eighteen months, two years, four years, and every three years thereafter. The Department will notify all eligible recipients of the availability of screening services at least once a year if they have not received an initial screening.

2. For physician-supervised EPSDT clinics, screening components must be provided according to the attached Physician EPSDT Periodicity Schedule.

G. Conditions of Screening Provider Participation in the EPSDT Program

1. All screening providers must complete the EPSDT billing form with one total charge submitted for the complete screening package.

   (a) The parent/child must be provided with a copy of the billing form.

   (b) Screening providers which are designated as EPSDT Equivalent Programs by the Department need not complete the billing form. In order to receive such a designation, a facility must screen children according to Minnesota Department of Health standards, must provide follow-up services to those children, and must be monitored by the Minnesota Department of Health. EPSDT Equivalent Programs may submit screening statistics in aggregate form.

2. All screening providers must complete a screening referral form, supplied by the Department, and provide this form to the parent/child in every instance when a child is referred for further diagnosis and treatment.

3. All screening providers must sign an EPSDT Provider Agreement whereby they agree to the provisions of Sections G.1. and G.2 above.

4. In order to qualify for Medical Assistance reimbursement, screening providers must follow all requirements for Medical Assistance Program participation as specified in DPW Rule 47.

5. All screening providers shall be reimbursed according to their usual and customary fee until six months after this rule is published. At that time, the Department will establish one maximum screening fee for physician supervised clinics and another maximum screening fee for nurse supervised clinics.

   Each of these maximum fees shall be equal to the seventy-fifth percentile of all screening charges submitted by each group during that six month period. After the maximum fees are established, screening providers shall be reimbursed according to their usual and customary fee or the Department's maximum fee, whichever is lower. The maximum fee shall be updated yearly.

6: Health Maintenance Organizations which participate in the Medical Assistance Program must provide EPSDT services as part of their contract with the Department for their enrollees at no extra charge to the Department, and must complete the EPSDT billing form for each child screened.

7: Screening providers may, after notifying the Department, elect to provide one or more of the screening components by referral to other providers. In such cases, the screening provider must ensure that the child receives the components for which he/she was referred before the screening is billed.

8: Screening providers may provide an outreach component as part of the screening and may charge for the extra outreach service after they have submitted a budget to the Department which justifies the outreach charge.

9: The Department must provide:

a: Training on screening components to all providers who sign the EPSDT Provider Agreement and who request such training.

b: Assistance in obtaining the forms and materials needed in the screening process.

10: The parent/child who requests screening services has free choice of all local screening providers who have signed EPSDT Provider Agreements.

H: Conditions of Diagnosis and Treatment Provider Participation in the EPSDT Program

1: Any health care provider licensed under state law who has signed a Medical Assistance Provider Agreement is eligible to provide appropriate diagnostic and treatment services to a child who has been screened.

2: Diagnosis and treatment providers must bill according to regular Medical Assistance procedures as outlined in DPW Rule 47. In addition, providers who diagnose or treat a child who has been screened, pursuant to Sections D and E, above, must complete the billing invoice so as to indicate that this child is being diagnosed or treated as part of the EPSDT Program. The Department will make payments according to regular Medical Assistance Procedures as specified in DPW Rule 47.

3: Diagnosis and treatment providers must follow all requirements for Medical Assistance Program participation as specified in DPW Rule 47.

4: The child or parent of the child who is referred for diagnosis and treatment as a result of a screening has free choice of all local diagnosis and treatment providers who are enrolled in the Medical Assistance Program.

I: Local Agency Responsibilities

1: Outreach

a: The local agency must notify all applicants for programs which include Medical Assistance eligibility about the EPSDT Program if the applicant or any of his/her children are under 21 years of age.

(1) The notification must include an oral and written explanation of the program.

(2) The notification must take place within thirty days of the date of application.

(3) The local agency must obtain a definite response in writing from each applicant for each child in the family within thirty days of the date of notification.

b. The Department will notify, in writing, parents, whose children have been screened, of their eligibility for re-screening at periodic intervals. The Department will also re-notify parents whose children have never been screened of their continuing eligibility for an initial screening. The local agency will receive the response and must handle the response per Section I.2. through I.6.

2. Response to a Screening Request

a. The local agency must provide each parent/child who accepts EPSDT services with a written list of screening providers in the area.

b. The local agency must, in writing, offer transportation to each parent/child who accepts EPSDT services and must provide transportation to the screening site to each child who requests such transportation or for whom such transportation is requested.

c. The local agency must, in writing, offer assistance in making the screening appointment to each parent/child who accepts EPSDT services and must provide such assistance to each child who requests it or for whom such assistance is requested.

3. Follow-up After a Screening Request

a. The local agency must make one additional offer of assistance to each parent/child who accepted screening services and was not screened within sixty days.

b. This offer of assistance may be done by a home visit, telephone call, or letter.

4. Follow-up for Diagnosis and Treatment

a. The Department, through the screening provider, will notify each parent/child who is referred for diagnosis and treatment, in writing, that the local agency will provide assistance, including transportation, in obtaining the needed diagnosis and treatment.

(1) If requested, the local agency must provide names and addresses of providers of the needed diagnostic and treatment services.

(2) If requested, the local agency must provide transportation to the diagnostic and treatment site.

b. The local agency must make one additional contact, within sixty days of the screening, with each parent/child who was referred for diagnosis and treatment in order to ascertain if needed diagnosis and treatment has been obtained.

(1) This contact must be made by either a home visit or telephone call.

(2) If diagnosis and treatment has not been obtained, the local agency must offer assistance, including transportation and/or a list of diagnosis and treatment providers, and must provide such assistance if requested.

(3) If the local agency has previously been informed that the child has received the needed diagnosis and treatment, this contact need not be made.

5. Local agencies must provide EPSDT notification and follow-up services to non-English speaking, illiterate and disabled applicants and recipients by a mode of communication which will enable them to fully understand and utilize the program.

6. Children in Foster Care Eligible for Medical Assistance

a. The local agency must accept EPSDT services for all foster children who are dependent/neglected state wards and who are eligible for Medical Assistance, except when such acceptance would not be in the best interests of the child.

b. The local agency must discuss the availability of EPSDT services with the parents of all foster children who are eligible for Medical Assistance and who are under the legal custody of the local agency or whose parents have entered into a voluntary placement agreement with the local agency except when the natural parents are not available for such a discussion. If the parent is not consulted, the local agency must decide whether or not to accept EPSDT services for the child and must document the reasons for such a decision. The local agency must assist the parent in deciding whether to accept EPSDT services.

c. The local agency must provide the case management services defined in Section I.2. through I.4. above to all foster children for whom EPSDT services are accepted.

d. The Department will notify the local agency in writing when foster children who are eligible for Medical Assistance are eligible for periodic re-screenings. The local agency must handle these notifications as specified in Section 6.a. and 6.b. above.

7. Documentation

Local agencies must document the completion of requirements in Section I.1. through I.4. above on forms prescribed by the Department.

8. Inter-Agency Coordination

Local agencies must cooperate, whenever possible, with other agencies which provide health services to children so that duplication of services is avoided. Examples of such agencies are local nursing services, local Head Start agencies, and local school districts.

9. Reimbursement for EPSDT Staff

a. Local agencies which intend to claim Title XIX federal financial participation at seventy-five percent for salaries and expenses of EPSDT administrative support staff must obtain written authorization from the Department by submittal of a plan that meets state and federal program requirements.

b. Local agencies which intend to claim Title XIX federal financial participation at seventy-five percent for contracts with outside agencies to perform EPSDT administrative support services must obtain written authorization from the Department by submittal of a plan that meets state and federal program requirements.

PHYSICIAN EPSDT PERIODICITY CHART

INTERVALS	MONTHS						YEARS					
	0-5	6-7	8-11	12-15	16-19	20-35	3-4	5-7	8-10	11-13	14-17	18-21
Health History	X	X	X	X	X	X	X	X	X	X	X	X
Assessment of Physical Growth:												
•Height	X	X	X	X	X	X	X	X	X	X	X	X
•Weight	X	X	X	X	X	X	X	X	X	X	X	X
•OFC	X	X	X	X	X	X						
Physical Examination	X	X	X	X	X	X	X	X	X	X	X	X
Dental Inspection	X	X	X	X	X	X	X	X	X	X	X	X
Vision	X	X	X	X	X	X	X	X	X	X	X	X
Hearing	X	X	X	X	X	X	X	X	X	X	X	X
Developmental:												
•PDQ/DDST	X	X	X	X	X	X	X					
•Interview/History Only								X	X	X	X	X
Sexual Development	X	X	X	X	X	X	X	X	X	X	X	X
Nutrition Review	X	X	X	X	X	X	X	X	X	X	X	X
Immunization Review	X	X	X	X	X	←	←	X	←	←	X	←
Tuberculin				X	←	←	←	←	←	←	←	←
Lead Absorption Testing		IF HISTORY INDICATES										
Urine						X	←	←	←	←	←	←
Bacteriuria (females)							X	←	X	←	←	←
Anemia Testing		X	←	X	←	X	X	←	←	←	X	←
Sickle Cell	AT PARENT'S OR CHILD'S REQUEST											
Other Lab Tests	AS INDICATED											

← Procedure to be completed if not done at the previous visit, or on the first visit.

APPROVED AS TO FORM AND LEGALITY
MAY 2 1978
19
WARREN SPANNAUS, ATTORNEY GENERAL
BY /s/ Michael B. Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAY 2 - 1978
Joan Anderson Growe
Secretary of State
3:45 pm

DPW Ex. #9

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE EDWARD J. DIRKSWAGER, JR.

COMMISSIONER OF PUBLIC WELFARE

RECEIVED
DEC 12 1977
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 61 OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE ADMINISTRATION OF THE EARLY AND PERIODIC SCREENING, DIAGNOSIS AND TREATMENT PROGRAM.

STATEMENT OF EVIDENCE

In addition to the "Statement of Need" which is available for inspection or purchase at the Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota 55104 and in support thereof, the Department of Public Welfare will introduce the following evidence:

Testimony will be presented explaining the history of the EPSDT Program and the need for the proposed rule.

We may call one or more of the following expert witnesses to testify:

Nancy J. Feldman, EPSDT Supervisor
Department of Public Welfare

Ms. Feldman may explain the provisions of the proposed rule and why these provisions are reasonable and necessary.

Robert C. Baird, Assistance Commissioner
Department of Public Welfare

Mr. Baird may explain the relationship of the proposed rule to the Medical Assistance Program.

Homer D. Venters, M.D.
Head, Department of Pediatrics
St. Paul - Ramsey Hospital

Dr. Venters may explain the operations of the Ad Hoc Physicians Committee which developed the Physician EPSDT Standards and the content of those standards.

We intend to introduce the following documentary evidence:

- "The Status of EPSD&T", a booklet produced by the Social and Rehabilitation Service of the Department of Health, Education and Welfare, (SRS) 76-02052.

- Section of the Medical Assistance Manual dealing with the EPSDT Program, issued by the Social and Rehabilitation Service of the Department of Health, Education and Welfare on June 28, 1972, MSA-PRG-21.

- A Guide to Screening - EPSDT - Medicaid, issued by the Social and Rehabilitation Service of the Department of Health, Education and Welfare, June, 1974, (SRS) 74-24516.

- "Quality Assurance of Ambulatory Child Health Care Opinions of Practicing Physicians About Proposed Criteria", Hugh C. Thompson, M.D., and Charles E. Osborne, Ed.D., Medical Care, January, 1976, Vol. XIV, No. 1, pp. 22-38.

We will be citing the following statutes and regulations:

- Minnesota Statutes:

  Chapter 256B.04, Subdivisions 2 and 4
  Chapter 256B.02, Subdivision 7

- Code of Federal Regulations:

  45 CFR 249.10(b)(4)(ii)
  45 CFR 249.10(a)(3)
  45 CFR 205.146(c)
  45 CFR 250.30(b)(3)
  45 CFR 249.20

Commissioner of Public Welfare

Dated: Dec. 7, 1977

Edward J. Dirkswager, Jr.
Edward J. Dirkswager, Jr.

DPW Ex #8

RECEIVED

DEC 12 1977

OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE EDWARD J. DIRKSWAGER, JR.

COMMISSIONER OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 61 OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE ADMINISTRATION OF THE EARLY AND PERIODIC SCREENING, DIAGNOSIS AND TREATMENT PROGRAM.

STATEMENT OF NEED

The above-captioned rule is a new rule which governs state administration of the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. The EPSDT Program was established by an amendment to Title XIX of the Social Security Act which required all states with Medical Assistance Programs to provide screening, diagnosis and treatment services for children eligible for Medical Assistance. Federal regulations requiring the establishment of the EPSDT Program are contained in 45 CFR 249.10(b)(4)(ii) and 249.10(a)(3)(i)-(iv). Additional federal regulations contained in 45 CFR 205.146(c) specify the conditions which a state must meet in implementing an EPSDT Program in order to avoid a fiscal penalty of one percent of the state's Title IV-A funds. Authority to promulgate this rule is contained in Minnesota Statutes, Chapter 256B.04, Subdivisions 2 and 4. These sections authorize the state agency to make rules so that the Medical Assistance Program can be administered uniformly throughout the state and so that the Medical Assistance Program qualifies for federal aid. Since the EPSDT Program is required by federal regulations and since federal funds may be lost if the program is not implemented uniformly according to federal requirements, this rule is necessary.

The EPSDT Program is designed as a comprehensive health care program which will draw eligible children into the health care system, screen them for possible health problems and provide diagnosis and treatment of any suspected problems discovered during the screening. The EPSDT Program differs from the regular Medical Assistance Program by providing outreach and follow-up support services so that children are encouraged to participate in the program and are provided assistance in obtaining the services they need. The screening is designed to provide a comprehensive assessment of a well child's health and should be repeated at intervals throughout childhood so that problems which have occurred since the last screening or which may occur without intervention can be discovered. The attached booklet, "The Status of EPSD&T", published by the Department of Health, Education and Welfare, provides a brief summary of the EPSDT Program.

Section A of proposed Rule 61 entitled "Introduction" is necessary to explain the scope of the rule and the purpose of the EPSDT Program. The "note" is necessary to clarify the usage of the phrase "parent/child" throughout the rule since this phrase may be confusing but is needed to show that the parent will usually, but not always, be involved with the child in the EPSDT process.

Section B entitled "Definitions" is necessary to define the terms that are included in the rule.

Section C entitled "Eligibility" is necessary to define which children are eligible to participate in the EPSDT Program. The requirements stated in this section are reasonable because they are based on federal regulations which limit participation in the EPSDT Program to persons from birth through age twenty who are eligible for Medical Assistance.

Section D entitled "Physician Screening Standards" is necessary in order to meet federal regulations. These regulations require states to provide screening services to eligible children in order to ascertain their physical or mental defects. It is necessary for the state to decide what specific procedures constitute a screening which is comprehensive enough to ascertain physical and mental defects as specified in the regulations. Although the regulations do not specify which components must be included in a screening, the Department of Health, Education and Welfare has required states to develop a package of screening procedures based on federal recommendations. In addition, federal reviewers require evidence that children screened have received all components in the state's screening package when they conduct periodic reviews of the program. Also, a clear specification of procedures to be included in the screening is necessary and reasonable so that the state can operate a uniform program on a statewide basis. The state must be able to require that all children who are screened receive the same minimum screening components so that the parent and child can be assured that all important areas of the child's health status have been evaluated.

The screening standards that are listed in Section D are reasonable for two reasons. First, the standards were developed by a group of physicians who formed an ad-hoc subcommittee of the state-level EPSDT Advisory Committee. The recommendations on screening standards which these physicians developed were mailed for comment to all primary care physicians in Minnesota and the comments which were received were incorporated into the final standards. Secondly, the standards are reasonable because they are consistent with guidelines issued by the Department of Health, Education and Welfare, and with well-child practice as specified by groups of pediatricians and experts in child health care.

Section E entitled "Nurse Screening Standards" is necessary because screening clinics operated by nurses currently provide screening services to approximately thirty percent of the Medical Assistance children who are screened. In order for the Department to avoid duplication of service to these children, to report accurately the number of children screened, and to increase the number of screening providers available, it is necessary and reasonable to recognize these clinics as providers for the EPSDT Program. In addition, Minnesota Statutes, Chapter 256B.02, Subdivision 7, lists "screening and health assessment services provided by public health nurses" as one of the goods and services recognized under the Medical Assistance Program. It is therefore necessary and reasonable for such providers to be recognized in this rule.

It is reasonable to recognize nurse-supervised clinics as screening providers because the standards and periodicity schedule they follow are as comprehensive or more comprehensive than the standards and periodicity schedule listed in Sections D and F of this rule. In addition, these clinics are approved by professional staff of the Minnesota Department of Health who have extensive expertise in the area of child health screening. The nurses who operate these screening clinics receive training from the Minnesota Department of Health and have on-site approval of their screening programs. Because the standards under which nurse-supervised clinics operate are comprehensive and meet federal requirements, and because these clinics receive ongoing supervision from the Minnesota Department of Health, it is reasonable for the Department to recognize these clinics as screening providers.

Section F entitled "Periodicity Schedule" and the attached Physician EPSDT Periodicity Chart are necessary because federal regulations require states to offer EPSDT services to eligible children no less often than annually. It is necessary for

the state to decide what intervals for screening are appropriate based on this federal requirement. Although the regulations do not clearly specify that states must devise a periodicity schedule, the Department of Health, Education and Welfare has required states to specify at which ages a child should be re-screened after an initial screening and which specific procedures should be offered. Federal reviewers require evidence that the state has a periodicity schedule established when they conduct reviews of the program. In addition, health experts agree that children should be re-screened at intervals so that problems which may have occurred since the last screening can be found and so that problems which may occur without early detection can be prevented. The periodicity schedule is also necessary and reasonable because certain procedures, such as a sickle cell test, need be performed only once and other procedures need be performed only at certain ages, and the state should be able to specify these factors.

The periodicity schedule is also reasonable because it was developed by the same committee of physicians which developed the physician standards and because it was also submitted for review to all primary care physicians in the state. In addition, this periodicity schedule is compatible with well-child practice as specified by experts in child health care.

Section G entitled "Conditions of Screening Provider Participation in the EPSDT Program" is necessary so that the state can ensure that applicable federal and state requirements are being met by screening providers participating in the EPSDT Program.

Section G.1. is necessary and reasonable because the state must have billing information in order to make payment to the provider. The state must have the health information contained on the invoice so that federal regulations concerning follow-up [45 CFR 205.146(c)(1)(ii) and (iii)] and documentation [45 CFR 205.146(c)(2) and (3)] can be met. It is reasonable and necessary for the parent and/or child to be provided with a copy of the billing form so that they know the results of the screening examination and can have a written record of it. It is reasonable and necessary for EPSDT Equivalent Programs to submit screening statistics in aggregate form since such programs provide all screening components and are closely monitored by the Minnesota Department of Health, but they do not provide all screening components at one time. Rather, they provide comprehensive health services to enrolled children over a period of time and thus cannot easily complete an EPSDT billing form. In order for the state to obtain information on the health services being provided to these children, and to avoid duplication of service, this section is necessary.

Section G.2. which requires referral forms is reasonable and necessary so that parents and/or children can have a clear understanding of what problem the child is being referred for and of the support services which the local welfare agency will provide if needed. This offer of assistance is required in federal regulations, 45 CFR 205.146(c)(1)(iii). The referral form is also necessary since it gives instructions to the diagnosis and treatment provider on how to bill for this service.

Section G.3. is reasonable and necessary so that the state can have an accurate listing of which providers have agreed to participate in the EPSDT Program as screening providers. In turn, the local agencies can then inform recipients of where they can obtain screenings which include all state-required screening components. Without such agreements, the state would not know which providers are interested in providing complete screening examinations and would not be able to assure

recipients that the providers to whom they are being referred are knowledgeable about the EPSDT Program and are willing to provide this service to their children. Also, providers who have signed EPSDT Provider Agreements can receive regular communications about the program as well as training and needed program materials. In addition, this section is necessary because federal regulations in 45 CFR 205.146 (c)(1)(ii) require states to inform recipients of the names and addresses of providers offering screening services.

Section G.4. is reasonable and necessary to clarify the fact that, since the EPSDT Program is part of the Medical Assistance Program requirements for provider participation under that Program must also be met.

Section G.5. is necessary and reasonable because federal regulations in 45 CFR 250.30(b)(3) require that the state develop a payment structure for individual practitioners in the Medical Assistance Program and that the payment may not exceed "the 75th percentile of the range of weighted customary charges in the same localities established under Title XVIII during the calendar year preceding the fiscal year in which the determination is made". Since a screening which includes all the components contained in Section D of this rule is a new service, the state wishes to obtain accurate information on usual and customary charges. In order to obtain the information, it is reasonable to allow providers to be reimbursed according to usual and customary fees for a period of six months. The state will use that reimbursement information to establish a maximum screening fee. It is reasonable and necessary for the state to establish one fee schedule for nurse supervised screening clinics and another maximum fee for physician supervised clinics since the background, training and subsequent costs of service are different for each of these groups and each group should therefore be compared to itself for purposes of setting maximum charges.

Section G.6. is reasonable and necessary since Health Maintenance Organizations which participate in the Medical Assistance Program currently have contracts with the Department which specify that enrolled recipients will receive all services covered by the Medical Assistance Program for one flat rate. This section merely clarifies the inclusion of screening services as one of the covered services under those contracts. Since the Department is required by federal regulations to provide screening services to eligible recipients, it is necessary for the Department to specify that Health Maintenance Organizations also provide this service. It is reasonable and necessary for the Department to require Health Maintenance Organizations to complete an EPSDT billing invoice for children screened so that the state can obtain information needed for follow-up and documentation purposes, as required by federal regulations.

Section G.7. is reasonable and necessary so that the Department can be flexible in making arrangements with screening providers. If a provider does not wish to train his/her staff to perform a particular screening procedure or does not wish to purchase the equipment necessary to perform a particular screening procedure, but still wishes to become a screening provider, this section would allow a provider to make other arrangements. It is necessary, however, for the Department to require the screening provider to ensure that the child actually receives all screening components so that federal requirements for the provision of complete screenings can be met.

Section G.8. is necessary so that the Department can encourage extra outreach efforts by screening providers and ensure providers that such extra efforts will receive reimbursement from the state. It is reasonable for the Department to require a budget from the provider which justifies the extra charge so that the Department can ensure that Medical Assistance funds are being properly expended.

Section G.9. is reasonable and necessary to inform providers of what assistance the Department will make available to those providers who sign EPSDT Provider Agreements.

Section G.10. is reasonable and necessary to comply with federal requirements in 45 CFR 249.20 which specify that Medical Assistance recipients are entitled to free choice of qualified health care providers who are participating in the state's Medical Assistance Program.

Section H. entitled "Conditions of Diagnosis and Treatment Provider Participation in the EPSDT Program" is necessary so that the state can ensure that applicable federal and state requirements are being met by diagnosis and treatment providers participating in the EPSDT Program.

Section H.1. is necessary to specify which health care providers can provide diagnosis and treatment services to a child who has been screened. It is reasonable to specify that the provider must be licensed under state law and must have signed a Medical Assistance Provider Agreement since these provisions will ensure that recipients receive quality diagnosis and treatment services by providers who have agreed to participate in the Medical Assistance Program.

Section H.2. is necessary to specify the conditions which diagnosis and treatment providers must follow in order to bill for services rendered to a child who is screened. It is reasonable for the provider to bill according to regular Medical Assistance procedures since diagnosis and treatment services are part of the regular Medical Assistance Program. It is reasonable for the Department in addition to require the provider to indicate that the child is under the EPSDT Program so that proper follow-up services can be provided to the child and so that the Department can properly document which children were diagnosed and treated through the EPSDT Program. The provision of follow-up services is required in 45 CFR 205.146(c)(1)(iii) and documentation is required in 45 CFR 205.146(c)(2) and (3).

Section H.3. is reasonable and necessary to clarify the fact that, since the EPSDT Program is part of the Medical Assistance Program, requirements for provider participation under that program must also be met.

Section H.4. is reasonable and necessary to comply with federal regulations in 45 CFR 249.20 which specify that Medical Assistance recipients are entitled to free choice of qualified health care providers who are participating in the state's Medical Assistance Program.

Section I. is necessary to specify the responsibilities which local welfare agencies have for implementing the EPSDT Program at the local level. Although the federal regulations which are cited below require local agencies to provide outreach and follow-up services, this section of the rule expands on the federal regulations and makes the responsibilities of local agencies more specific.

Section I.1. is necessary because individuals must be informed about the EPSDT Program in order to choose to participate in the program. In addition, federal requirements in 45 CFR 205.146(c)(1)(i) require the state to inform eligible families about the program and its benefits. Section I.1.a.(1) is reasonable because a full explanation of the program is necessary to assist individuals in understanding the value of preventive health care since this concept is not widely understood. Section I.1.a.(2) is reasonable because some local agencies make home visits to explain the program and they should have additional time in which to do so.

Section I.1.b.(3) is reasonable because the program cannot be properly administered unless staff know if a person is or is not interested in participating in the program when they are first notified about it. Federal reviewers require a definite response to the initial notification when they make periodic reviews of the program. Allowing thirty days from the date of notification for a response to be made gives applicants the opportunity to make a decision if they are undecided at the time of notification.

Section I.1.b. is reasonable and necessary because federal requirements in 45 CFR 205.146(c)(1)(i) require the state to make such periodic notifications and because recipients whose children have been screened have the right to be informed that their children are due for a re-screening according to the state's periodicity schedule. It is also reasonable for recipients whose children have not been screened to be informed of the children's continuing eligibility for EPSDT services. It is reasonable for the state to make this notification since the state's computer capability enables this notification to be performed efficiently once a month. It is necessary and reasonable for local agencies to hande responses to this notification in the same manner as they handle responses to the initial notification since recipients who have accepted EPSDT services for themselves or their children have the right to receive such services and since federal regulations require such actions.

Section I.2. is necessary because federal requirements in 45 CFR 205.146(c)(1)(ii) require that such assistance be provided, and because children who need assistance in receiving screening services should receive such assistance so that they can take advantage of the service. One of the reasons for initial implementation of the EPSDT Program was the belief that individuals, and especially children, do not receive needed health care because the health care system is often too inaccessible or confusing to the individual. This section of the rule requires local agencies to provide support services to those individuals who need such services. Giving the parent/child a written list of screening providers is reasonable so that the parent or child can be aware of where the screening service can be obtained. Providing transportation and other assistance is reasonable so that barriers to receiving the screening can be removed.

Section I.3. is necessary because federal requirements in 45 CFR 205.146(c)(1)(ii) require states to take steps to assist recipients so that they can receive screening services within sixty days. It is also necessary so that children who did not receive screening services can be offered the assistance they may need to be able to receive screening. It is reasonable that this offer be done by home visit, telephone call or letter because such a choice will provide local agencies with flexibility in determining how best to follow-up on each case.

Section I.4. is necessary because federal requirements in 45 CFR 205.146(c)(1)(iii) require the state to inform recipients of the names of providers, to offer assistance including transportation, and to assist recipients so needed diagnosis and treatment can be received within sixty days. This Section is also necessary because screening is of little value if needed diagnosis and treatment is not received, and the state should provide needed assistance so that these services can be obtained. As in Section I.2., if lack of transportation or other services is a barrier to the child receiving needed medical services, then the intent of the EPSDT Program is to provide assistance so that these barriers are removed. It is reasonable for the state to inform the parent or child of the offer of assistance through the screening provider since every child who is screened will be in personal contact with the

screening provider and the provider will be able to most efficiently provide this information. It is reasonable for the local agency to provide the needed assistance since such services are available and should be provided at the local level. It is necessary for the local agency to make one additional contact with the parent or child in order to ensure that the child has actually received the needed diagnosis and treatment. It is reasonable that this contact be made by home visit or telephone call since it is necessary for the parent or child to be contacted directly in order for the local agency to ascertain if diagnosis and treatment has been received. It is reasonable for the local agency to provide needed assistance so that any additional barriers to the receipt of needed medical care are removed. It is reasonable that the local agency not make this follow-up call if they have previously been informed that needed diagnosis and treatment has been received because follow-up would be a duplication of effort.

Section I.5. is necessary and reasonable because federal requirements in 45 CFR 205.146(c)(1)(i) require states to make alternate arrangements for providing EPSDT services to individuals for whom printed material is inappropriate. This section is also necessary and reasonable because eligible individuals have the right to receive EPSDT services regardless of whether they speak English, are illiterate, or are disabled.

Section I.6. is necessary because foster children who are eligible for Medical Assistance are also eligible for EPSDT services. However, because their setting is different from children living with their own parents, it is necessary for the state to make special requirements so that foster children can have access to this service. This section is also necessary because 45 CFR 249.10(a)(3)(iv) requires all children who are eligible for Medical Assistance to also be eligible for EPSDT services. Section I.6.a. is reasonable because the state has legal responsibility for the health care of children who are dependent/neglected state wards and should therefore be sure that such children receive EPSDT services unless the local agency can show that such services would not be in the child's best interests. Section I.G.b. is reasonable because the state must ensure that all parents and children who are eligible for EPSDT services are aware of this eligibility and the best way to do so, in the cases of children under the legal custody of the local agency or under voluntary placement with the local agency, is for the local agency to consult with the parent and assist the parent in deciding whether to accept EPSDT services. Sections I.G.c. and d. are reasonable and necessary because federal regulations require that these services be provided to all children who accept EPSDT services and because foster children who accept EPSDT services have the same right to receive support and assistance as all other children who accept EPSDT services.

Section I.7. is necessary and reasonable because federal regulations in 45 CFR 205.146(c)(2) and (3) require states to document all the requirements for notification and follow-up and to provide reports to federal authorities on such activities so that the fiscal penalty will not be imposed. In order to provide such documentation, the state must be able to require local agencies to document their efforts. Providing this documentation on forms prescribed by the Department is reasonable so that a uniform system of data collection which satisfies federal requirements will exist on a statewide basis.

Section I.8. is reasonable and necessary because many other programs concerned with children's health exist in the state and services can easily be duplicated if efforts are not coordinated. Such duplication leads to a needless expenditure of public funds and to needless confusion and burdens for the parents and children involved. Some coordination can and is being performed at the state level. However,

coordination at the local level is also necessary to ensure that as many children as possible receive needed services, but that services are not duplicated. Federal authorities also stress coordination of services and make periodic visits to the state to review the coordination efforts being undertaken.

Section I.9. is necessary because the state must ensure that federal reimbursement being claimed by local agencies for EPSDT expenditures meets requirements which have been devised by the Department of Health, Education and Welfare. Federal authorities have informed the state that such claims by local agencies must be monitored by the state and will, in turn, be reviewed by federal auditors. It is reasonable to require local agencies to submit a plan so that the state can have written evidence that such requirements are being met.

Commissioner of Public Welfare

Dated: December 7, 1977

Edward J. Dirkswager, Jr.

DPW Ex # 1

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

RECEIVED
DEC 12 1977
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 61 OF THE DEPARTMENT OF PUBLIC WELFARE, GOVERNING THE EARLY AND PERIODIC SCREENING, DIAGNOSIS AND TREATMENT PROGRAM

AFFIDAVIT OF ADDITIONAL MAILING

JACQUELINE SUE WIERSTAD, being first duly sworn, deposes and says:

That on the 5th day of December, 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, in addition to mailing the attached Notice of Hearing to all persons and associations listed on the Secretary of State's list, she also served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid to the following agencies:

All Minnesota County Welfare Departments
All Minnesota Human Service Boards
All Minnesota Area Mental Health Boards
All Minnesota State Hospitals
2000 Primary Health Care Providers
including physicians, physician groups, outpatient hospitals, community clinics county nursing services, early periodic screening clinics and health maintenance organizations

In addition, the attached list of persons or organizations were also mailed the proposed Rule 61 along with the Notice of Hearing.

Jacqueline Sue Wierstad

Subscribed and sworn to before me
this 6th day of December
1977.

Margaret Holt

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

DPW Ex #5

RECEIVED
DEC 12 1977
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE EARLY AND PERIODIC SCREENING, DIAGNOSIS AND TREATMENT PROGRAM, RULE 61

CERTIFICATE OF DELIVERY SECRETARY OF STATE LIST

I hereby certify that the attached 486 Labels, 4 sheets constitute the complete list of persons, associations, and other interested groups who as of 8:30 o'clock A M., this 1st day of DECEMBER, 19 77, have requested pursuant to M.S. 19 76, 15.0412 Subd. 4, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

Joan Anderson Growe

By Cheri L. Matteson

DPW Ex. #4

RECEIVED
DEC 12 1977
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE EARLY AND PERIODIC SCREENING, DIAGNOSIS AND TREATMENT PROGRAM, RULE 61

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Jacqueline Sue Wierstad, being duly sworn on oath deposes and says:

1) That she is an employee of the Executive Division of the State of Minnesota.

2) That on the 1st day of December, she went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the 1st day of December, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Jacqueline Sue Wierstad

Subscribed and sworn to before me this 1 day of December, 1977

Notary Public,

Ramsey County, Minnesota

My Commission expires Sept 22, 1984

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

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE EARLY AND PERIODIC SCREENING AND DIAGNOSIS) AND TREATMENT PROGRAM, RULE 61.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on January 9, 1978, before Peter C. Erickson, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Department of Public Welfare on March 1, 1978; and

WHEREAS, the Department of Public Welfare has now determined to adopt the rule pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Department of Public Welfare has submitted said rule to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rule is not substantially different from that proposed at the public hearing and that the Department of Public Welfare has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Department of Public Welfare has the responsibility of submitting the complete hearing record and the rule as adopted by the Department to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 14th day
of March, 1978.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rules of the Department of Public Welfare Governing the Early and Periodic Screening and Diagnosis and Treatment Program, Rule 61.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiners at 8:30 a.m. on Monday, January 9, 1978 in conference room D, Veterans Service Building, St. Paul, Minnesota.

Barbara Gill, Special Assistant Attorney General, appeared as counsel on behalf of the Department of Public Welfare. Nancy J. Feldman, EPSDT Supervisor; Robert C. Baird, Assistant Commissioner, and Homer D. Venters, M.D., testified in support of the proposed rule on behalf of the Department. The hearing continued until all interested groups or persons had an opportunity to be heard concerning the adoption of the proposed rules.

Pursuant to Minn. Stat. § 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The Department of Public Welfare shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Department on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the Department of Public Welfare shall be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

STATE OF MINNESOTA

COUNTY OF RAMSEY

EDWARD J. DIRKSWAGER, JR.

COMMISSIONER OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rules of the Department of Public Welfare Governing the Early and Periodic Screening and Diagnosis and Treatment Program, Rule 61.

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson, of the State Office of Hearing Examiners on January 9, 1978, in Conference Room D, Veterans Building, after proper notice as required by Minn. Stat. § 15.0412, subd. 4 (1977) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

At said hearing the proposed Rule 61 as published at 2 State Register 1112 was considered. The following persons testified for the Department of Public Welfare: Nancy J. Feldman, Robert C. Baird, Homer D. Venters, M.D. The hearing continued until all interested groups and persons had an opportunity to be heard. Pursuant to order of the Hearing Examiner the record was held open for twenty (20) days for the submission of written material.

Based upon all the records and proceedings, the Hearing Examiner made Findings of Fact, Conclusions and a Recommendation which are contained in the Report of Hearing Examiner dated March 1, 1978. Said Report is attached hereto as Exhibit A.

Pursuant to the requirements of Minn. Stat. § 15.0412, subd. 4 (1977) said Report was available to all affected persons for at least five (5) days.

Having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards and criteria, and having confirmed the need for the above-captioned rules and the reasonableness thereof,

NOW THEREFORE, IT IS ORDERED, that the Findings, Conclusions and Recommendation of the Hearing Examiner as contained in the Report of Hearing Examiner are hereby adopted and incorporated herein. In addition, the Commissioner makes the following:

FINDINGS OF FACT

1. The Department has reviewed the recommendations of Dr. Robert W. ten Bensel contained in his letter of January 12, 1978, to the Hearing Examiner. Dr. ten Bensel recommends that the word "unclothed" be deleted from Section D.3. The deletion of the word "unclothed" from Section D.3. is reasonable because the word is redundant when

used to describe a physical examination by a physician. This deletion is an insubstantial change which adds clarity to the rule. The rule has been amended accordingly.

Dr. ten Bensel also recommends that the word "examination" be added after the word "neurological" at the end of Section D.3. This is an insubstantial change which adds clarity to the rule and the rule has been amended accordingly.

2. Dr. ten Bensel states that the specification color blindness and retinitis pigmentation in Section D.5.a.(1) is unnecessary. The deletion of the phrase "such as color blindness or retinitis pigmentation" is reasonable because physicians know the standard ocular abnormalities, and listing two examples adds nothing substantial to the rule. The rule has been amended accordingly.

3. The Department has discovered two minor typographical errors remaining in the rule. In Section G.3. the reference to Section D. is an error. The reference should be to Section G.1. In Section H.2. the reference should be to Sections D and E, not to Sections E and F. The rule has been amended to reflect these corrections.

IT IS FURTHER ORDERED, that this rule identified as Rule 61 of the Rules of the Minnesota Department of Public Welfare is adopted this 13 day of March, 1978, and after this day Rule 61

shall read in its entirety as set forth in the attached Exhibit B, pursuant to the authority vested in me, and pursuant to Minn. Stats. Chapters 15 and 256B.

Dated: March 13, 1978

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

Edward J. Dirkswager Jr.

EDWARD J. DIRKSWAGER, JR.
Commissioner

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Barbara Gill, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Barbara D. Gill

Special Assistant Attorney General

Dated: 3/22/78

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On December 7, 1977, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. On December 5, 1977, a Notice of Hearing and a copy of the proposed rules were published at 2 State Register 1112.

3. On December 5, 1977, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On December 12, 1977, the Department filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need;
(g) The Statement of Evidence, including the names of witnesses to be called; and
(h) The names of Department personnel who will represent the agency.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through January 30, 1978 for the receipt of written comments and statements.

6. Statutory authority to promulgate the proposed rule is contained in Minn. Stat. § 256B.04, subds. 2 and 4 (1976).

7. As the hearing began, the Department proposed several corrections to the rule to eliminate typographical errors. They are as follows:

(1) Page 1, Section B.6: Citation in fourth line to Section E should be to Section D.

(2) Page 1, Section B.6: Citation in the sixth line to Section G.3 should be to Section G.2.

(3) Page 3, Section D.5.b.1: Citation in the first line to E.5.a should be to D.5.a.

(4) Page 4, Section D.6.b.1: Citation in the first line to E.6.a should be to D.6.a.

(5) Page 9, Section I.6.d: Citation in the last line to 5.a and 5.b should be to 6.a and 6.b.

8. The above-captioned rule is a new rule which governs state adminstration of the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. The EPSDT Program was established by an amendment to Title XIX of the Social Security Act which required all states with Medical Assistance Programs to provide screening, diagnosis and treatment services for children eligible for Medical Assistance. Federal regulations requiring the establishment of the EPSDT Program are contained in 45 CFR 249.10(b)(4)(ii) and 249.10(a)(3)(i)-(iv). Additional federal regulations contained in 45 CFR 205.146(c) specify the conditions which a state must meet in implementing an EPSDT Program in order to avoid a fiscal penalty of one percent of the state's Title IV-A funds.

The EPSDT Program is designed as a comprehensive health care program which will draw eligible children into the health care system, screen them for possible health problems and provide diagnosis and treatment of any suspected problems discovered during the screening. The EPSDT Program differs from the regular Medical Assistance Program by providing outreach and follow-up support services so that children are encouraged to participate in the program and are provided assistance in obtaining the services they need. The screening is designed to provide a comprehensive assessment of a well child's health and should be repeated at intervals throughout childhood so that problems which have occurred since the last screening or which may occur without intervention can be discovered.

9. Section A of proposed Rule 61 entitled "Introduction" is necessary to explain the scope of the rule and the purpose of the EPSDT Program. The "note" is necessary to clarify the usage of the phrase "parent/child" throughout the rule since this

phrase may be confusing but is needed to show that the parent will usually, but not always, be involved with the child in the EPSDT process.

10. Section B entitled "Definitions" is necessary to define the terms that are included in the rule.

a. The Minnesota Medical Association (MMA) proposed to change the word "incompatible" in B.5 to compatible because of what appears to be a typographical error. The Department stated, however, that in light of the "Equivalent" standards in G.1.(b), "incompatible" is the correct word.

b. The MMA questions the use of the term "Nurse-Supervised EPSDT Clinic" because of the prohibition on nurses to perform diagnosis and treatment. The Department stated that the definition only serves to distinguish between the types of screening clinics and does not imply that any individual will practice medicine outside the scope of his/her license.

c. Legal Advocacy for the Developmentally Disabled of Minnesota (LADDM) suggested that the procedures included within the follow-up (B.7) should be specified or incorporated by reference in appropriate sections of the rule. The Department stated that such a specification is not necessary and that Section I of the proposed rule clearly states the follow-up requirements for local welfare agencies.

d. LADDM proposed to substitute definitions contained in the Medical Assistance Manual for B.12, 15 and 16; "outreach", "screening" and "treatment", respectively. The Department stated that outreach activities are contained in Section I; that the proposed definition of screening is the most recent federal definition and is compatible with similar Department of Health and Education rules; and that treatment services are too numerous to be included in a definition.

e. The Minnesota School Boards Association (MSBA) commented that the definition of "local agency" is ambiguous and should be clarified. The Department concurred with this concern

and proposed that the definition be amended as follows:

> B.8 Local agency: the county welfare board, multi-county welfare board, or human service agency established in accordance with state law and responsible for the administration of the EPSDT Program at the county level.

11. Section C entitled "Eligibility" is necessary to define which children are eligible to participate in the EPSDT Program. The requirements stated in this section are based on federal regulations which limit participation in the EPSDT Program to persons from birth through age twenty who are eligible for Medical Assistance.

12. Section D entitled "Physician Screening Standards" is necessary in order to meet federal regulations. These regulations require states to provide screening services to eligible children in order to ascertain their physical or mental defects. It is necessary for the state to decide what specific procedures constitute a screening which is comprehensive enough to ascertain physical and mental defects as specified in the regulations. Although the regulations do not specify which components must be included in a screening, the Department of Health, Education and Welfare has required states to develop a package of screening procedures based on federal recommendations. In addition, federal reviewers require evidence that children screened have received all components in the state's screening package when they conduct periodic reviews of the program. Also, a clear specification of procedures to be included in the screening is necessary so that the state can operate a uniform program on a state-wide basis. The state must be able to require that all children who are screened receive the same minimum screening components so that the parent and child can be assured that all important areas of the child's health status have been evaluated.

a. The MMA commented that the level of detail regarding a physician's screening is inappropriate and unnecessary. The Department responded as follows:

The standards are required by federal regulations and the Department must prove to federal authorities that each child screened under the program has received each of the components. The standards for physicians were developed by a representative group of physicians and were shown to correspond to prevailing recommended child health practice. In order to serve our clients adequately, the Department feels that workers must be able to assure clients that each child will receive a test for each of the components which are part of a screening under the EPSDT Program. The Department therefore reiterates its position that the physician screening standards are both reasonable and necessary.

b. The MMA and the MSBA both raised concerns regarding the issue of variance from the physician screening standards which are included in the rule. The Department concurred with the need for flexibility and proposed that a new paragraph be added to Section D which would read as follows:

D.12 Variation From Screening Procedures

If a provider wishes to substitute other procedures for those contained in Section D.1 through D.11, or wishes to omit any of the required procedures, written application must be made to the EPSDT Section in the Department. All such requestes shall be reviewed by a Physician Advisory Committee and a decision on the request shall be made by the Committee, in writing, within 30 days of the receipt of the request.

c. Ms. Joann M. Fasching, R.N., commented that the urine, hct., and T.B. tests should be done every time a child is in for screening with the exception of the first two years of life when yearly is adequate.

d. The Department proposed to amend D.10 to ensure that all children who are screened receive the immunizations they need. The Department feels that referral increases the chances that the child may not receive the needed immunizations. The amendment reads as follows:

D.10 Immunizations: The immunization status of all children must be checked. Needed immunizations must be offered and provided if requested~~;--or-referral-made-so-that-the-child-can-receive-the-needed immunizations~~. Immunizations must be administered according to the Recommended Schedule of Immunizations developed by the Minnesota Department of Health and approved by the Minnesota State Medical Association.

13. Section E entitled "Nurse Screening Standards" is necessary because screening clinics operated by nurses currently provide screening services to approximately 30% of the Medical

Assistance children who are screened. In order for the Department to avoid duplication of service to these children, to report accurately the number of children screened, and to increase the number of screening providers available, it is necessary to recognize these clinics as providers for the EPSDT Program. In addition, Minn. Stat. § 256B.02, subd. 7, lists "screening and health assessment services provided by public health nurses" as one of the goods and services recognized under the Medical Assistance Program. It is reasonable for such providers to be recognized in this rule.

14. Section F entitled "Periodicity Schedule" and the attached Physician EPSDT Periodicity Chart are necessary because federal regulations require states to offer EPSDT services to eligible children no less often than annually. It is necessary for the state to decide what intervals for screening are appropriate based on this federal requirement. Although the regulations do not clearly specify that states must devise a periodicity schedule, the Department of Health, Education and Welfare has required states to specify at which ages a child should be re-screened after an initial screening and which specific procedures should be offered. Federal reviewers require evidence that the state has a periodicity schedule established when they conduct reviews of the program. In addition, health experts agree that children should be re-screened at intervals so that problems which may have occurred since the last screening can be found and so that problems which may occur without early detection can be prevented. The periodicity schedule is also necessary because certain procedures, such as a sickle cell test, need be performed only once and other procedures need be performed only at certain ages, and the state should be able to specify these factors.

a. Ms. Fasching commented on F.1 as follows:

> F-1. Periodicity schedule. "The Department will offer screening services on a yearly basis to children who have not been screened." This statement

is confusing and should perhaps be left out. Once a child has been screened, they would be rescreened on the schedule stated previously. If a child has not been screened before, then the "one year" as stated doesn't make sense - i.e., one year from what?

15. Section G entitled "Conditions of Screening Provider Participation in the EPSDT Program" is necessary so that the state can ensure that applicable federal and state requirements are being met by screening providers participating in the EPSDT Program.

a. The Faribault, Martin and Watonwan Human Service Board, Olmsted County Health Department and Brown County Public Health Nursing Service commented that the seventy-fifth percentile reimbursement scheme will not cover the actual costs of the screening. They argue that if county agencies have to pay for the excess unreimbursed costs, the programs may have to be dropped.

The Department contends that it is "unable to devise another formula for developing maximum fees that would meet federal regulations. . . ." The Department feels "that the formula for reimbursement contained in this section is equitble. . . ."

b. LADDM proposed that G.8 be amended to allow the Department to require screening providers to develop outreach components. The Department stated that it would not want to mandate outreach for fear that providers may choose not to participate in the EPSDT Program because of the extra burden.

16. Section H. entitled "Conditions of Diagnosis and Treatment Provider Participation in the EPSDT Program" is necessary so that the state can ensure that applicable federal and state requirements are being met by diagnosis and treatment providers participating in the EPSDT Program.

17. Section I. is necessary to specify the responsibilities which local welfare agencies have for implementing the EPSDT Program at the local level. Although the federal regulations require local agencies to provide outreach and follow-up

services, this section of the rule expands on the federal regulations and makes the responsibilities of local agencies more specific.

a. The Governor's Planning Council on Developmental Disabilities commented that I.6.b may be deficient if the parent of a foster child cannot be reached for discussion of EPSDT services. The Department agreed that more flexibility is needed in the section and proposed the following amendment:

> I.6.b. The local agency must discuss the availability of EPSDT services with the parents of all foster children who are eligible for Medical Assistance and who are under the legal custody of the local agency or whose parents have entered into a voluntary placement agreement with the local agency <u>except when the natural parents are not available for such a discussion. If the parent is not consulted, the local agency must decide whether or not to accept EPSDT services for the child and must document the reasons for such a decision.</u> The local agency must assist the parent in deciding whether to accept EPSDT services.

b. The Ramsey County Welfare Department proposed that I.1.a. be amended to reflect the fact that only persons under 21 years of age are eligible for EPSDT services. The Department concurred with that concern and proposed to amend the section as follows:

> I.1.a. The local agency must notify all applicants for programs which include Medical Assistance eligibility about the EPSDT Program <u>if the applicant or any of his/her children are under 21 years of age</u>.

c. LADDM suggested that I.1.a.(3) be amended to require something in writing if EPSDT services are rejected. The Department stated that the policy now is to require a writing and that the rule should be amended as follows:

> I.1.a.(3) The local agency must obtain a definite response <u>in writing</u> from each applicant for each child in the family within thirty days of the date of notification.

d. LADDM suggested that offers of assistance should be made only by home visit or telephone call. The Department stated that in order to provide flexibility to local agencies, offers by way of letter are necessary.

e. The Marshall County Welfare Department proposed to amend I.4. by adding a statement that no follow-up is required if the child is no longer MA eligible. The Department replied that because federal regulations and Section C of the rule state the eligibility requirements, such an amendment is not necessary in I.4.

f. LADDM proposed that the mechanisms used for follow-up diagnosis and treatment should be specified in I.4.a. The Department stated that these are internal management procedures and are not appropriate for inclusion in the rule.

g. LADDM suggested that I.8., Inter-Agency coordination, be expanded to clarify the kinds of coordination to be pursued by local agencies. The Department responded that the amounts and types of inter-agency coordination needed at the local level were too variable to enable more specific language to be written.

18. The MMA suggested that a provision be added to the rule requiring an identification of existing and ongoing health care services, including private physicians, within the community. It contends that such a provision would assist in assuring that an unnecessary and costly duplication of services will not occur.

19. The MMA commented that "one-time" urine and tuberculine testing may not be enough in high-risk, high-exposure situations. Also, that the value of the bacteriuria test is questionable and to strike it from the chart.

20. The Northport Medical Center suggested that provisions be added to the rules stating that all licensed physicians in the state are qualified to perform EPSDT without a signed agreement and that all licensed physicians are qualified to accept referrals from any screening source.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and filed by the Department of Public Welfare. All other substantive and procedural requirements of statute or rule have been complied with.

2. Pursuant to Minn. Stat. § 15.052, subd. 3 (1976), it is the duty of the Hearing Examiner to: ". . . (4) make a report on each proposed agency action . . . taking notice of the degree to which the agency has (i) documented its statutory authority to take the proposed action; (ii) fulfilled all relevant, substantive and procedural requirements of law or rule; and (iii) demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts."

3. The Examiner concludes that the proposed rule should be amended as set out in Findings 7, 10.e, 12.b, 12.d, 17.a, 17.b and 17.c for the reasons stated therein.

4. The Examiner concludes that the last sentence in F.1 is unreasonably unclear (see Finding 14.a). The Examiner suggests the following amendment:

> The Department will notify all eligible recipients of the availability of screening services at least once a year if they have not received an initial screening.

5. Section G.5. states that the maximum fee reimbursable is equal to the seventy-fifth percentile of all screening charges submitted by each group during that six-month period. Without getting into a discussion of statistics, seventy-fifth percentile does not mean seventy-five percent of the charges. The concerns of several counties regarding unreimbursed costs (see Finding 15.a) may not be founded. The Examiner concludes that the formula proposed by the Department is reasonable.

6. The Examiner concludes that the Department of Public Welfare has documented its statutory authority to take the proposed action.

7. The Examiner concludes that the Department of Public

Welfare has demonstrated the need for and reasonableness of the proposed rules, as recommended to be amended, by an affirmative presentation of facts.

8. The Examiner concludes that the amendments recommended above make the rules more reasonable and do not constitute a substantial change.

Based upon the foreging Conclusions, the Examiner makes the following:

RECOMMENDATION

That the Department of Public Welfare adopt the proposed rule as recommended to be amended in this Report. (See Conclusions 3 and 4)

Dated this 1st day of March, 1978.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner