STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED
AMENDMENT OF MINNESOTA RULES,
PARTS 9505.1693 to 9505.1748
GOVERNING ADMINISTRATION OF THE
EARLY AND PERIODIC SCREENING,
DIAGNOSIS, AND TREATMENT PROGRAM
AND GOVERNING THE PAYMENT RATE
ESTABLISHED IN PART 9505.0445, ITEM M

STATEMENT OF NEED
AND REASONABLENESS

INTRODUCTION

Early and Periodic, Screening, Diagnosis, and Treatment (EPSDT) is an entitlement program of comprehensive health care for people under age 21 who are eligible for medical assistance benefits. The program informs eligible children or their parents of the availability of EPSDT; screens eligible children for health disorders; provides diagnosis and treatment indicated as needed by a screening; ensures that screening, diagnosis and treatment are available on a periodic basis; helps to make appointments for EPSDT services; and helps with transportation to EPSDT services.

The EPSDT program was established by Public Law Number 90-248, Social Security Amendments of 1967. The federal government imposed financial penalties for non-implementation of the program because states were implementing the program too slowly. Public Law Number 97-35, (the Omnibus Budget Reconciliation Act of 1981 or OBRA 1981), amending section 1902 (a) of the Social Security Act eliminated the penalty and required states to:

inform all Medicaid recipients under age 21, who are eligible for EPSDT under the plan, of EPSDT availability;

provide or arrange for requested screening services; and

arrange for corrective treatment of health problems found as a result of screening.

OBRA 1989 further amended section 1902 (a) of the Social Security Act by requiring states to include health education and counseling as an EPSDT service and to permit interperiodic visits and any medically necessary treatment for health problems found during the screenings and visits.

Federal regulations governing the EPSDT program are found in Title 42, Code of Federal Regulations, section 440.40(b) and Subpart B of section 441.

Minnesota implemented the EPSDT Program in 1974. Early and periodic screening, diagnosis, and treatment providers now serve children in every county in Minnesota.

Rules governing Minnesota's EPSDT program, parts 9505.1500 to 9505.1690, became effective June 6, 1978. Parts 9505.1500 to 9505.1690 were repealed upon the effective date of the present rules, parts 9505.1693 to 9505.1748. The present rules have been in effect since 1988.

County social service agencies manage EPSDT administrative services, such as outreach and follow-up, under state supervision. At present, some counties contract with a local public health agency to provide EPSDT administrative services. Currently, there are 50 such contracts including contracts in Hennepin, Ramsey, and St. Louis Counties.

The proposed amendments revise parts 9505.1693 to 9505.1748 for the purpose of ensuring consistency with revisions of applicable federal regulations and of modifying restrictions on administrative contracts for outreach services. The proposed amendment of part 9505.0445 revises the payment rate for EPSDT services so that all screenings will be paid without regard to the type of provider.

A notice to solicit outside opinion concerning the proposed amendments was published in the State Register on Monday, 20 August 1990.

The Department was assisted by a public advisory committee comprised of persons familiar with the EPSDT program and EPSDT providers. The committee membership is listed in Attachment A. The committee met on October 24, 1990 and discussed the amendments of the payment rate proposed in part 9505.0445 and the amendments related to program standards for developmental screenings, immunizations, health education and counseling, schedule of screenings, and contracts for administrative services. The committee agreed that it did not want to meet again unless major revisions were made to the material it discussed on October 24. No other meeting was held as the Department has made only technical revisions since the meeting on October 24.

Additionally the Department received and considered written comments that were received after the committee had met.

Part 9505.0445 Payment rates, item M.

The proposed amendment will replace the present two-tiered system, which bases payment rates on whether the services are provided in a physician-supervised or a nurse-supervised clinic. Because EPSDT is an entitlement program for eligible children, it is necessary that the payment rate be in an amount that will attract enough providers to assure service access for all eligible children. At present, 15% of the 500 agencies providing EPSDT services are nurse supervised clinics, which provide the same services as those provided in physician supervised clinics. It is reasonable to have a single method of determining the payment for the same services because a single method insures equitable treatment of the service providers.

The proposed amendment changes the period used in calculating the rate from a six month interval (November to April) to a 12 month interval, July 1 to June 30, which coincides with the state fiscal year. Expanding the interval for collecting the data to be used in calculating the payment rate to a 12 month basis is consistent with the use of a 12 month interval in determining payment rates for other medical assistance services. Furthermore, using data from the

preceding 12-month period is reasonable as this approach is consistent with data collection periods applicable to other medical assistance programs. For example, see part 9505.0445, items E to H. Allowing a three month period, July 1 to September 30 is reasonable because it provides the Department sufficient lead time to compute the 75th percentile for the payment rate adjustment and notify counties and other providers before the rate takes effect on October 1. Setting October 1 as the effective date of the adjustment also is reasonable as it balances the computation time required and the provider's timely receipt of appropriately adjusted payments.

Part 9505.1693 Scope and purpose

The proposed amendment is necessary and reasonable because it informs affected persons that requirements related to the EPSDT program were amended in section 6403 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 1989).

Part 9505.1718 Screening standards for an EPSDT clinic; Subpart 2, Health and developmental history.

The proposed amendment requires the child's history recorded by an ESPDT clinic to include information on the child's social, emotional, and mental health status. 42 CFR 440.40 (b) requires EPSDT to provide "screening and diagnostic services to determine physical or mental defects" in recipients and "health care treatment, and other measures to correct or ameliorate any defects and chronic conditions discovered." 42 CFR 441.56 (b) requires screening to include "regularly scheduled examinations and evaluations of the recipient's general physical and mental health..." The amendment is reasonable as it is consistent with the federal regulations establishing standards for screenings in the EPSDT program.

Part 9505.1718 Screening standards for an EPSDT clinic; Subpart 9, Development.

This amendment removes the requirement that the Denver Prescreening Developmental Questionnaire (PDQ) or the Denver Developmental Screening Test must be administered to a child under six years of age unless the use of an alternative test has been approved by the department. The advisory committee agreed with Department program staff that it is no longer necessary to specify the screening test because of the increased number of valid screening tools for younger children. Although the Denver tests are good, the Department wants to place more emphasis on the provider's judgment about selecting an acceptable measure or measures. In the case of older children, the advisory committee agreed that there is a paucity of screening tools and that the appropriate current practice is to rely on the judgment of the health professional conducting the screening about how to assess the child's developmental status. Because the purpose of the screening is to compare the child's developmental status to the normal range for the child's age, it is necessary and reasonable to require the standardized test to have norms for the age range being tested. The advisory committee expressed concern that the test be culturally appropriate and sensitive. The Department agrees with the committee that a test which is culturally appropriate to the child whose developmental status is being assessed is necessary and reasonable as there are differences in the developmental patterns of different ethnic

groups. The other requirements for the test chosen, written procedures for administration, scoring, interpretation, statistical reliability and validity are standards required to assure that test is appropriately used and interpreted.

Part 9505.1718 Screening standards for an EPSDT clinic; Subpart 12. Immunizations.

The Minnesota Department of Health issues the "Recommended Schedule for Active Immunizations of Normal Infants and Children". This schedule is updated frequently so that it remains current with federal and state laws and regulations and the recommendations of the Centers for Disease Control of the United States Public Health Service. Subpart 12 refers to the June 1988 schedule. However, the health department has replaced the 1988 schedule with one issued in 1991. The schedule is subject to frequent change, usually made on an annual basis. An amendment is necessary so that the rule requirement remains consistent with the applicable current standard. Therefore, it is reasonable to require the use of the current edition of the schedule as the health department under Minnesota Statutes, section 144.05 is responsible for "protecting, maintaining, and improving the health of the citizens." 42 CFR 441.56 (b)(2) requires screening service standards to be provided "in accordance with reasonable standards of medical ... practice ...after consultation with recognized medical ...organizations involved in child health care." See also 42 CFR 441.56 (c)(3) about appropriate immunizations. The proposed amendment also revises the rule to refer affected persons to the agency which is responsible to provide to the public copies of the immunization schedule, the Minnesota Department of Health.

Part 9505.1718 Screening standards for an EPSDT clinic; Subpart 13. Laboratory tests.

This subpart sets the standards for various laboratory tests that may be necessary to diagnose a child's health status and determine a child's need for treatment.
Item B sets the standard for lead screening to determine whether a child has a blood lead level that exceeds the maximum allowable level.
The Centers for Disease Control (CDC) of the United States Public Health Service are the federal agency responsible for the control and prevention of disease. The responsibility includes determining testing standards applicable to the level of lead in a child. The proposed amendment of item B is necessary to ensure consistency with the federal standard, which requires testing of children who are between one and five years of age. Because the allowable blood level is determined from empirical evidence, as new data are accumulated, the allowable level may be revised. Thus the proposed amendment is reasonable as it does not set a fixed level but rather relies on the standard established CDC. Thus, if the proposed rule is adopted, the standard will remain consistent with the one set by the responsible agency, CDC. An initial determination of the child's blood lead level may be done by either an erythrocyte protoporphyrin test or a blood lead screening test. Requiring a second test if the initial test shows a lead level exceeding the maximum allowable is reasonable because it provides evidence about the accuracy of the determination. A venous blood lead test is

reasonable as the follow-up test because it usually results in a more specific determination. An elevated lead level may adversely affect the child's physical and mental development. Referring the child for diagnosis and treatment is necessary and reasonable so that the child may be removed from source of the lead and receive treatment to lower the blood lead level.

Part 9505.1718 Screening standards for an EPSDT clinic; Subpart 14a. Health education and counseling.

The standards of the American Academy of Pediatrics include "anticipatory guidance" as a function of the physician who is assessing the physical and mental status of a child. (The department notes that the advisory committee interpreted the term "anticipatory guidance" very broadly but to include health counseling and education.) Health counseling and health education are health related services because they are directed toward ameliorating or maintaining the child's health status. A parent and a child cannot be expected to have the same level of knowledge about children's growth and development or about how to effectively promote a child's growth and development as a physician or other EPSDT provider. For example, a child who is failing to thrive or a child who is obese may have an underlying mental health or a physical health condition or be receiving improper nutrition. A physician through counseling and education concerning the child's health would be able to develop a plan to address the physical symptoms and recommend follow-up visits to check the child's health status. See 42 CFR 441.56 (b)(1) which requires the screening to evaluate the "general physical and mental health, growth, development, and nutritional status." See also 42 CFR 441.56 (b)(2) which requires screening services "to be provided in accordance with reasonable standards of medical..practice.... after consultations with recognized medical..organizations involved in child health care." Therefore, requiring health counseling and health education concerning the child's health as a screening standard is reasonable as this service is a standard used by a recognized medical organization and is a directed toward ameliorating or maintaining the child's health status. The OBRA '89 amendments require that health education be provided as a component of EPSDT,

Part 9505.1718 Screening standards for an EPSDT clinic; Subpart 15. Schedule of age-related screening standards.

The amendment clarifies that the frequency of the screenings components listed in subparts 2 to 14 is a minimal standard. More frequent screenings may be necessary to meet the child's needs. This is consistent with 42 CFR 441.57. The amendment of the schedule itself increases the recommended number of screenings from 14 to 20 during the years from birth up to age 21. The amendment is reasonable because the federal guidance suggests that the American Academy of Pediatrics (AAP) periodicity schedule be used. The advisory committee agreed with this guidance and that the AAP schedule is recognized as the usual standard of practice by the medical community.

Part 9505.1718 Screening standards for an EPSDT clinic; Subpart 15a. Additional screenings.

The schedule in subpart 15 is not binding on the client or the EPSDT provider. A provider may provide a service more frequently according to the client's need.

Additionally, present federal regulations at 42 CFR 441.57 require more frequent visits than indicated in present subpart 15. It has historically been Minnesota's policy to pay for more frequent screenings than the federally required minimum or the number in the schedule in subpart 15. Subpart 15 a is necessary to inform providers and clients of the federal standard and to ensure consistency between the state's practice and the rule. It is reasonable for additional screening to take place if a screening is medically necessary or a concern develops about the child's health or development as the provision is consistent with 42 CFR 441.58 (c) which permits the state to provide, through the EPSDT program, any other needed screening services. See part 9505.0210 which sets the criterion of medically necessary as a general requirement for services provided through the medical assistance program and the definition of medically necessary in part 9505.0175, subpart 25.

Part 9505.1748 Contracts for administrative services; Subpart 1. Authority .

Amendments to this subpart are necessary to enable three additional types of agencies, Head Start agencies, community action agencies, and public school districts to have administrative contracts related to EPS and EPSDT services. They are being added in an effort to increase the participation rate of eligible children. At present, 20 % of eligible children aged 0 to 5 years participate in Minnesota's EPS/EPSDT program and 10% of eligible children aged 6 up to 21 years. (The federal government estimates Minnesota's present participation rate as 34%) However, the federal government has set a standard of 80% participation of eligible children to be reached by 1995. Expansion of agencies eligible for contracts will assist Minnesota to reach the federal goal for participation as Head Start agencies, community action agencies, and public school districts have ongoing contacts with children who as medical assistance recipients are eligible for EPSDT services and their families. Additionally, public school districts in Minnesota already employ health professionals such as school nurses and therapists, who provide health services the same as or similar to EPSDT services. Therefore, contracts with Head Start agencies, school districts and community action agencies are reasonable as they are cost effective and assist the department to reach the federal goal.
It is necessary to define "community action agency" and "public school district" to clarify the meaning of these terms. The definitions rely on those given in the cited Minnesota Statutes.

Part 9505.1748 Contracts for administrative services; Subpart 4, Approval.

This amendment revises the time for submission of contracts to the department for approval from January 1 to November 1. The earlier date of November 1 will give the Department time to review the contract and approve or disapprove it before the effective date of the contract on January 1. The earlier date is reasonable because it is administratively efficient and permits providers to be notified in a timely manner before the effective date of January 1.

Item G. The amendment of item G is a technical amendment that is necessary and reasonable to include the additional agencies that will be able to obtain administrative contracts for EPS/EPSDT services.

Item I. This item is being repealed as the information is no longer required by the federal government. Thus, the item is no longer necessary.

Items K to M are customary contract provisions related to the medical assistance program. Item L also is required by the federal government as a condition of eligibility for medical assistance payment.

Small Business Considerations

This rule is exempt from small business consideration in rulemaking under Minnesota Statutes, section 14.115, subdivision 7, clause (3).

Expert Witnesses

If this rule should be heard in public hearing, the Department does not plan to have outside expert witnesses testify in its behalf.

Date: November 28, 1991

NATALIE HAAS STEFFEN
Commissioner of Human Services