

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

RECEIVED  
JAN 27 1999

OSCAR SALAZAR, et al.,  
on behalf of themselves  
and all others similarly  
situated,

Plaintiffs,

v.

THE DISTRICT OF COLUMBIA,  
et al.,

Defendants.

Civil Action No. 93-452 (GK)

FILED

JAN 25 1999

NANCY MAYER-WHITTINGTON, CLERK  
U.S. DISTRICT COURT

ORDER MODIFYING THE AMENDED REMEDIAL ORDER OF MAY 6, 1997  
AND VACATING THE ORDER OF MARCH 27, 1997

WHEREAS, the parties desire to resolve the pending appeals in  
this case,

WHEREAS, upon consideration of Plaintiffs' motion for entry of  
this Order Modifying the Amended Remedial Order of May 6, 1997, and  
Vacating the Order of March 27, 1997 (hereafter "Order"), and  
Defendants' response agreeing to the motion, the Court concludes  
that the modifications to the Amended Remedial Order of May 6,  
1997, and the vacation of the Order of March 27, 1997, set forth  
herein are fair, reasonable and adequate,

IT IS, this 22nd day of January, 1999,  
ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Amended Remedial Order of May 6, 1997, and the Order  
of March 27, 1997, are vacated.

I. Monitor

2. Thomas W. Chapman, M.P.H., FACHE, served as Monitor  
pursuant to Orders of the Court from March 10, 1997, to June 16,  
1998. The parties understand that the Court is in the process of

SPINDLE # 42

ITEM # 667

663

selecting a new Monitor. The Monitor shall have the duties and responsibilities set forth in this Order.

3. The function of the Monitor is to report, record, evaluate, observe, and provide recommendations, as appropriate, about Defendants' activities so as to achieve full compliance with the provisions of this Order. The Monitor shall remain neutral and objective in carrying out all monitoring duties. The Monitor shall receive reasonable compensation from the District of Columbia, as determined by the Court.

4. The Monitor shall be under the direct supervision and control of the Court, and shall not be empowered to direct Defendants to take or refrain from taking any specific action to achieve compliance with the provisions of this Order. The Monitor shall endeavor to work cooperatively with Defendants and Plaintiffs, and may recommend efficient and economical methods by which Defendants may achieve compliance.

5. From time to time, as directed by the Court or as provided in this Order, the Monitor shall prepare written reports to the Court, copies to counsel, indicating the status of Defendants' compliance with said Order, and the factors that affect such compliance. The parties shall have thirty (30) days thereafter within which to submit comments on such reports, and prior to the Court taking any action, unless otherwise stated in this Order *or directed by the Court,*

## II. Processing of Medicaid Applications (Claim 4)

6. (a) With respect to non-disability, non-foster care, non-Public Assistance Medicaid applications (hereafter, "application" or "applicant"), Defendants shall determine eligibility and mail a notice of decision within forty-five (45) days of the date of receipt of all applications.

(b) This paragraph shall apply to all applications including pending applications as of the date of entry of this Order.

(c) Provided, however, if an applicant submits the documentation and/or verification required for the District to determine the applicant's Medicaid eligibility more than 40 days after the receipt of the signed application by the District, the District shall have 5 days to process the application from the time that the applicant submits all the documentation and/or verification. The processing of an application within 5 days of the time the documentation and/or verification is submitted pursuant to this subparagraph shall be considered as timely. The processing of an application later than 5 days after the time the documentation and/or verification is submitted pursuant to this subparagraph shall be considered as untimely. This subparagraph shall only apply if the District has requested from the applicant, in writing, all the documentation and/or verification that is required and has not been submitted (a) within 5 days of the time the application is submitted; or (b) within 5 days of the applicant's submission of information or a document which first causes the need for additional documentation and/or verification.

7. Each member of the plaintiff class has a right to a decision on an application within forty-five (45) days of making the application. This right may be asserted only by individuals invoking their right to a fair hearing.

8. Defendants shall be in compliance with paragraph 6 above, unless, averaged over any four (4) consecutive month period, Defendants fail to issue decisions on at least 95% of all applications within the time period provided in paragraph 6 above.

9. No month shall be considered in determining whether Defendants are in violation of paragraphs 6 and 8 above or in calculating the termination of Section II of this Order under paragraph 74 below in which an event beyond the reasonable control of Defendants causes Defendants to fail to comply with paragraphs 6 and 8. An "event beyond the reasonable control of Defendants" shall include, but not be limited to, a central computer breakdown, an unusually high number of employee resignations or terminations, a significant expansion of Medicaid eligibility criteria (based on changes in federal or District law or policy) such that new classes of persons are eligible, one or more employees having intentionally concealed from Income Maintenance Administration (IMA) management the fact that five (5) or more applications have not been processed, or a reduction in force (RIF) attributable to a substantial reduction in the budget of the Department of Human Services that affects a significant number of supervisors or employees who are necessary to the processing of applications. No event shall satisfy the requirements of this paragraph unless

Plaintiffs' counsel is notified in writing of the claim and the justification for the claim (a) within fourteen (14) days of Defendants having actual notice that the event will cause failure to comply with this paragraph, or (b) within twenty-two (22) days of the end of the reporting month affected by the event, whichever is sooner.

10. (a) Defendants shall have the right to suspend the provisions of paragraphs 6 and 8 during the initial implementation of the State Children's Health Insurance Program (SCHIP). No month during which the provisions of paragraphs 6 and 8 are suspended may be used to justify termination of Section II of this Order under paragraph 74. Defendants may exercise this right for one continuous period at any time during the first twelve (12) months of the implementation of the SCHIP program. This paragraph shall not be applicable unless Defendants notify Plaintiffs within 30 days of the time the SCHIP program begins to be implemented and by the last day of the month as to which Defendants begin the suspension period.

(b) This paragraph discusses the SCHIP program solely with relation to its impact on Defendants' obligation to process Medicaid applications of presently recognized members of the plaintiff class within 45 days of submission. This Order is not intended to address, and does not decide, whether children receiving medical services under the SCHIP program are, or are not, members of any of the plaintiff sub-classes in this litigation. If Plaintiffs believe that applicants for or recipients of services

under the SCHIP program are members of one or more of the plaintiff sub-classes, Plaintiffs may file a motion with the Court for a determination of this issue.

11. The 95% and 98% standards in paragraphs 8 above and 12 below shall be calculated each month on the basis of the total number of cases decided (i.e., approved or denied) in the month. The ratio shall be computed in the following manner: (number of cases decided in accordance with paragraph 6 above or paragraph 12 below) divided by (total number of cases decided in the month).

12. Any application pending on the 46th day after receipt by Defendants or on the 6th day after the applicant completes submission of all information reasonably requested by Defendants no more than five (5) days after the initial application or within five (5) days of the applicant's submission of information or a document which first causes the need for additional documentation and/or verification, whichever is later, shall receive an eligibility determination on the 46th day, or the 6th day, whichever is applicable. If an application is denied, Defendants shall inform Plaintiffs of the name and case number and shall state the reason for denial within thirty (30) days of the due date of the report required by paragraph 16 below. Defendants shall not be in violation of this paragraph so long as 98% of the applications receive eligibility determinations by the 60th day. Defendants shall not be in violation of this paragraph in any month in which an event beyond the reasonable control of Defendants causes Defendants to fail to comply with this paragraph. An "event beyond

the reasonable control of Defendants" shall include, but not be limited to, a central computer breakdown, an unusually high number of employee resignations or terminations, a significant expansion of Medicaid eligibility criteria (based on changes in federal or District law or policy) such that new classes of persons are eligible, one or more employees having intentionally concealed from IMA management the fact that five (5) or more applications have not been processed, or a reduction in force (RIF) attributable to a substantial reduction in the budget of the Department of Human Services that affects a significant number of supervisors or employees who are necessary to the processing of applications. In such an event, such a month shall not be considered in determining compliance with this paragraph or the termination of Section II of this Order under paragraph 74 below. No event shall satisfy the requirements of this paragraph unless Plaintiffs' counsel is notified in writing of the claim and the justification for the claim (a) within fourteen (14) days of Defendants having actual notice that the event will cause failure to comply with this paragraph, or (b) within twenty-two (22) days of the end of the reporting month affected by the event, whichever is sooner.

13. In determining compliance under paragraphs 8 and 12 above, the following cases shall not be included:

(a) Spend down cases, meaning cases in which there has been a timely denial because the applicant is over-income for Medicaid and there is subsequent activity in the case relating to Defendants' determination whether the applicant has submitted

adequate documentation to qualify for Medicaid under the spend down program. The initial determination on such applications shall be included in the reports required by paragraph 16 below and for determining compliance under paragraphs 8 and 12 above;

(b) Reopened cases where there has been a timely denial of a Medicaid application because of the applicant's failure to submit by the 45th day information or documents requested by Defendants in writing no later than five (5) days after the date of the application and there is subsequent activity in the case relating to whether the information or documents submitted by the applicant after the 45th day are adequate to qualify the applicant for Medicaid. The initial determination on the application and any subsequent application shall be included in the reports required by paragraph 16 below and for determining compliance under paragraphs 8 and 12 above;

(c) Family members added to an existing case where there has been a timely approval of some members of a household for Medicaid and there is a subsequent addition of one or more additional individuals to the household. The initial determination on the household's application and any subsequent application filed for other members of the household shall be included in the reports required by paragraph 16 below and for determining compliance under paragraphs 8 and 12 above; and

(d) Applicants for long-term care Medicaid who are receiving care in a nursing home or hospital, and for whom a delay in an application decision will not result in the applicant being



denied medical services. This subparagraph shall only apply if Defendants have requested that the nursing home and/or hospital in which the applicant is receiving care not seek payment from Medicaid applicants while their Medicaid applications are pending. Defendants' request to nursing homes and hospitals may include a disclaimer by Defendants stating that Defendants do not accept liability for any Medicaid applicant's medical expenses until the application is approved. All other applicants for long-term care Medicaid who are not at the time of their application in a nursing home or hospital shall be included in determining compliance under paragraphs 8 and 12 above.

14. Defendants shall include in a document provided at the time the application is made to each applicant (including those who mail in applications or submit them at a location other than a Department of Human Services service center), and in all written notices to applicants identifying information or documentation to be supplied to Defendants, a conspicuous statement that (a) Defendants must approve or disapprove the application within forty-five (45) days, and that (b) if the applicant has not received notice of approval or disapproval by the 45th day, the applicant is to call the social service worker to whom the application was submitted (i.e., the SSA or the SSR) and/or the SSR's supervisor and request that such a determination be made.

15. Defendants shall include in a document provided at the time the application is made to each applicant (including those who mail in applications or submit them at a location other than a

Department of Human Services service center), and in all written notices to applicants identifying information or documentation to be supplied to Defendants, a conspicuous statement that, if the eligibility of the applicant is not determined within forty-five (45) days of the application, the applicant may obtain free legal assistance concerning the application by contacting Plaintiffs' counsel. This statement shall give the name, address and telephone number of Plaintiffs' counsel. The reasonable time and expenses of Plaintiffs' counsel shall be deemed compensable monitoring of this Order under 42 U.S.C. § 1988.

16. Beginning no later than the 15th day of the first full month following the month in which this Order is entered and on the 15th day of each month thereafter, Defendants shall submit to the Monitor and Plaintiffs' counsel, a monthly report or reports for each DHS service center (reporting the Multinational Unit separately as long as it exists), listing in alphabetical order by name, case number, and Medicaid identification number (if any), the date each application was received, the date each application was approved or denied, the number of days between the date of receipt of the application and the date of approval or denial, and all applications that were still pending more than forty-five (45) days after the date of application on the last day of the month. In addition, the report shall set forth in composite form the total number of applications received in the month, the number approved in the month, and the number denied in the month.

### III. Processing of Medicaid Recertifications (Claim 5)

17. With respect to non-Public Assistance, non-foster care, Medicaid recipients (including the disabled) (hereafter, "recipient"), beginning no later June 1, 1999, Defendants shall not terminate a recipient's eligibility for Medicaid benefits unless Defendants have sent the recipient a recertification form at least fifty-five (55) days prior to the end of the eligibility period, and either: (a) the recipient has not returned the recertification form and Defendants have sent an advance termination notice at least twenty-five (25) days prior to the end of the recipient's eligibility period; or (b) some or all of the information and/or documentation requested by Defendants in writing has not been received by Defendants after the recipient has been given a minimum of ten (10) days to produce the information or documentation requested and Defendants have determined to deny continued eligibility for Medicaid and a notice of termination of benefits has been mailed to the recipient fifteen (15) days prior to the actual termination of benefits; or (c) the recertification form, information and documentation have been received by the last day of the eligibility period and Defendants have determined that the recipient is no longer eligible for Medicaid and a notice of termination of benefits has been mailed to the recipient fifteen (15) days prior to the actual termination of benefits.

18. Each member of the plaintiff class has a right not to have Medicaid benefits terminated without advance notice and an

opportunity for a hearing. This right may be asserted only by individuals invoking their right to a fair hearing.

19. Defendants shall be in compliance with paragraph 17 above, unless, averaged over any four (4) consecutive month period, Defendants fail to process at least 95% of all recertifications in accordance with the requirements of paragraph 17.

20. No month(s) shall be considered in determining whether Defendants are in violation of paragraphs 17 and 19 above or in calculating the termination of Section III of this Order under paragraph 75 below in which an event beyond the reasonable control of Defendants causes Defendant to fail to comply with paragraph 17 and 19. An "event beyond the reasonable control of Defendants" shall include, but not be limited to, a central computer breakdown, an unusually high number of employee resignations or terminations, one or more employees having intentionally concealed from IMA management the fact that five (5) or more recertifications have not been processed, or a reduction in force (RIF) attributable to a substantial reduction in the budget of the Department of Human Services that affects a significant number of supervisors or employees who are necessary to the processing of recertifications. No event shall satisfy the requirements of this paragraph unless Plaintiffs' counsel is notified in writing of the claim and the justification for the claim (a) within fourteen (14) days of Defendants having actual notice that the event will cause failure to comply with this paragraph, or (b) within twenty-two (22) days

of the end of the reporting month affected by the event, whichever is sooner.

21. The 95% standard in paragraph 19 above shall be calculated each month on the basis of the total number of recertification cases in which a determination was made (i.e., approved or terminated) in the month. The ratio shall be computed in the following manner: (number of cases in which a determination was made after both (1) a timely recertification form has been sent to the recipient and (2) a timely and accurate notice of termination or continued eligibility has been sent) divided by (the total number of cases in which a determination was made in the month).

22. If, after the conclusion of the work of Maximus Inc. required by paragraph 24 below and Defendants, having made all reasonable efforts for one year thereafter to comply with the standard set forth in paragraph 19 above, calculated by the method set forth in paragraph 21 above, have not achieved the standards set forth in those paragraphs, Defendants may move the Court to set an alternate standard to show compliance. Defendants shall have the burden to show that the standard set forth in paragraph 19, calculated by the method set forth in paragraph 21, cannot be achieved by all reasonable efforts.

23. No later than February 1, 1999, Maximus Inc. shall conduct quality control testing to ensure that the computer changes that Defendants have promised to make and that are required to implement this portion of the Order are fully operational and

provide a report of their conclusions to Plaintiffs and the Monitor. The report of Maximus Inc. shall report in detail the type of quality control testing done and the results of the testing. In the event that Maximus Inc. does not complete the testing and provide a report to Plaintiffs and the Monitor by February 1, 1999, the Monitor shall no later than March 1, 1999, start conducting independent quality control testing to ensure that the computer changes that Defendants have promised to make and that are required to implement this portion of the Order are fully operational. The Monitor shall use his or her best efforts to engage a consultant who is familiar with ACEDS or a similar public benefits computer system. The Monitor shall report in detail the type of quality control testing done and the results to the Court and counsel for the parties. Provided however, that the parties intend to conduct a meeting in good faith after the execution of this Order for the purpose of eliminating the need for and cost of the study required in this paragraph. If the parties agree that the study required by this paragraph is not necessary in light of their meeting, they will execute a subsequent agreement to be approved by the Court eliminating this paragraph.

24. Defendants have entered a contract with Maximus Inc., pursuant to which Defendants have instructed Maximus Inc. that Maximus Inc. must study and prepare a report and recommendations concerning the actions Defendants will need to take in processing recertifications to comply with paragraph 19 above. Defendants shall ensure that the work of Maximus Inc. is completed on an

expedited basis and a report and recommendations submitted no later than February 1, 1999. Defendants shall provide Plaintiffs' counsel with a copy of the report and recommendations once completed within fifteen (15) days of receipt from Maximus Inc.

25. Defendants shall include in a written notice to all Medicaid applicants, and in a written notice to all Medicaid recipients at the time of recertification, a conspicuous statement that, if the recipient returns the recertification form and all required information and documentation prior to the end of the eligibility period, the recipient's eligibility must be continued uninterrupted until the recipient receives a notice of termination that states Defendants' determination that the recipient is no longer eligible for Medicaid. The notice shall also include information about other rights such as the right to a hearing, if there is an adverse determination on eligibility.

26. The notice required in paragraph 25 above shall include a conspicuous statement that if the recipient's Medicaid eligibility is terminated without advance notice or after notice that erroneously states that the recipient did not return the recertification form or all information and/or documentation requested, the applicant may obtain free legal assistance by contacting Plaintiffs' counsel. This statement shall give the name, address and telephone number of Plaintiffs' counsel. The reasonable time and expenses of Plaintiffs' counsel shall be deemed compensable monitoring of this Order under 42 U.S.C. § 1988.

27. On the 15th of each month, Defendants shall submit to the Court, the Monitor, and Plaintiffs' counsel, a monthly report for each DHS service center handling recertifications (reporting the Multinational Unit separately as long as it exists). The monthly report shall include the following information for each recipient whose Medicaid eligibility was determined as a result of a recertification (i.e., approved or terminated) during the month: (a) in alphabetical order, the name, address, telephone number (if known), and Medicaid identification number for each such recipient; (b) the date any recertification form(s) was mailed to the recipient; (c) the date the recipient's then current eligibility period began; (d) the date the recipient's then current eligibility period expires; (e) the date that the recipient submitted the recertification form and all necessary verification and/or documentation; (f) the date that Defendants determined (i.e., approved or terminated) the recipient's eligibility; and (g) the date that any advance notice(s) of termination or continued eligibility was mailed to the recipient. In addition, the report shall set forth in composite form the total number of recertification forms received back from recipients in the month, and the number approved in the month, and the number denied in the month.

28. Defendants have contracted with Maximus Inc. to issue a report and recommendations concerning the production of the reports required by paragraph 27 above. Upon receipt and review of that report, Plaintiffs agree to engage in good-faith negotiations with



Defendants concerning whether the reports required by paragraph 27 can be made less burdensome to Defendants while still meeting Plaintiffs' legitimate information needs. If Defendants propose a modification to the reports required by paragraph 27 and the parties cannot agree, Defendants may submit the matter to the Court for resolution. Defendants shall have the burden of proof to show that Plaintiffs' need for the particular information in order to enforce this Order is outweighed by the costs of providing such a report.

IV. Eligibility Verification System (EVS)

29. Defendants shall not operate the Eligibility Verification System (EVS) in a manner that causes eligible Medicaid recipients' benefits to be terminated, suspended, or interrupted without advance notice or an opportunity for a hearing. Defendants shall instruct its providers that they must call the EVS backup system if EVS reports ineligibility. Defendants shall state in the Rights and Responsibilities sheet that providers have been so instructed.

30. Defendants shall include in a document provided at the time the application is made to each applicant (including those who mail in applications or submit them at a location other than a Department of Human Services service center), in notices of eligibility, and in recertification forms or accompanying written materials, a conspicuous statement that, if, during a period when they are eligible for Medicaid, EVS informs the recipient or a provider is informed that the recipient is not eligible for

Medicaid, the recipient may obtain free legal assistance by contacting Plaintiffs' counsel. This statement shall give the name, address and telephone number of Plaintiffs' counsel. Defendants shall provide this same information, at least annually, to all Medicaid providers and require the providers to provide Medicaid recipients with this same information if EVS reports them as ineligible for Medicaid during a period when they are eligible. The reasonable time and expenses of Plaintiffs' counsel shall be deemed compensable monitoring of this Order under 42 U.S.C. § 1988.

31. On the 15th of each month, Defendants shall submit to the Monitor, and Plaintiffs' counsel, a monthly report of all systemic problems experienced by EVS, including but not limited to, breakdowns and failures of the system to provide needed information in a timely manner.

32. Defendants shall conduct quality control of the EVS system and make monthly reports to the Monitor and Plaintiffs' counsel regarding the results of the quality control. Defendants shall be deemed in compliance with this portion of this Order only if they can establish through a statistically valid sampling method that the verification system, including both EVS and the back-up system, accurately confirms the eligibility status of at least 98% of all requests for eligibility verification in any given month.

33. Defendants shall maintain a consistently accurate back-up system that can be used when EVS and/or its replacement states that a person is ineligible. The back-up system shall include a telephone information service that shall provide Medicaid

recipients and providers with all eligibility information provided by EVS or its replacement, twenty-four (24) hours a day, three hundred and sixty-five (365) days a year. Defendants shall direct providers to use the back-up system whenever EVS reports ineligibility. Defendants shall notify recipients of the existence and purpose of the back-up system and its telephone number in the notices approving the recipient's eligibility and recertification. Defendants shall notify providers of the existence and purpose of the back-up system and its telephone number in a Transmittal at least annually.

34. If the reports submitted by Defendants under paragraph 32 above show that the verification system, including both EVS and the back-up system, accurately confirms the eligibility status of at least 98% of all requests for eligibility verification for twenty-two (22) of twenty-four (24) consecutive months, and accurately confirms the eligibility status of at least 95% of all requests for each of the other two (2) months, Defendants shall no longer be required to submit the reports required by paragraphs 31 and 32 above. These consecutive months shall begin with the first report showing at least 98% accuracy, including any such months before the effective date of this Order. However, after Defendants cease producing such reports on a monthly basis, Plaintiffs may choose one month per calendar year for Defendants to produce the reports required by paragraphs 31 and 32. If the single month's report shows compliance with the 98% standard, no further reports may be required until the subsequent calendar year. If the single report

shows that the 98% standard is not being met, Defendants shall produce the monthly reports required by paragraphs 31 and 32 until Defendants have shown six (6) consecutive months of compliance with the 98% standard. Defendants shall not be in violation of this paragraph in any month in which an event beyond the reasonable control of Defendants causes Defendants to fail to comply with this paragraph, such as a central computer breakdown. In such an event, such a month shall not be considered in determining compliance with this paragraph or the termination of this paragraph under paragraph 76 below. No event shall satisfy the requirements of this paragraph unless Plaintiffs' counsel is notified in writing of the claim and the justification for the claim (a) within fourteen (14) days of Defendants having actual notice that the event will cause failure to comply with this paragraph, or (b) within twenty-two (22) days of the end of the reporting month affected by the event, whichever is sooner.

35. If Defendants fail to meet the deadlines or other requirements set forth in paragraphs 29, 30 and 32-34 above, Defendants shall submit to Plaintiffs, within fourteen (14) days, a report specifically describing the failure, the reasons for the failure, a schedule for correcting the failure, and the measures that will be taken to prevent the failure in the future. If Defendants fail to submit the report or Plaintiffs notify the Monitor that they are not satisfied with the report, the Monitor shall study the reasons for such failure and possible remedies and submit recommendations to the Court for implementation by

Defendants. The parties shall have thirty (30) days thereafter within which to submit comments on the Monitor's recommendations, and prior to the Court taking any action.

V. EPSDT Services (Claim 6)<sup>1/</sup>

36. Defendants shall provide or arrange for the provision of early and periodic, screening, diagnostic and treatment services (EPSDT) when they are requested by or on behalf of children.

37. Within thirty (30) days after the effective date of each contract, Defendants shall ensure that the Managed Care Organizations (MCO's) with which it contracts to provide EPSDT services to children maintain a tracking system for all children that shows:

(a) by name and Medicaid identification number, whether each child has obtained the screens, as defined in 42 U.S.C. 1396d(r)(1)(B), and laboratory tests set forth in the District of Columbia periodicity schedule issued in accordance with 42 U.S.C. 1396d(r)(1)(A)(i), 1396d(r)(2)(A)(i), 1396d(r)-(3)(A)(i), 1396d(r)(4)(A)(i), at the times set forth in that schedule, including lead blood screens, mental health screens, dental services, and vision and hearing tests (hereafter "screens and laboratory tests");

(b) by name and Medicaid identification number, whether each child has received age-appropriate immunizations in accordance with the immunization schedule of the Centers for Disease Control

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<sup>1/</sup>The following provisions in this Section of the Order shall relate to all Medicaid recipients under the age of twenty-one (21) (hereafter "child" or "children").

Advisory Committee on Immunization Practices (hereafter "immunization schedule");

(c) by name and Medicaid identification number, whether and on what date(s) each child has been referred for corrective treatment determined to be necessary as a result of an EPSDT screen or laboratory test;

(d) by name and Medicaid identification number, whether and on what date each child referred for corrective treatment as a result of an EPSDT screen or laboratory test has obtained the corrective treatment for which the child was referred;

(e) by name and Medicaid identification number, the date on which each of the outreach activities set forth in paragraphs 38 and 39 below were undertaken with respect to the child.

38. The contracts that Defendants are entering into with MCO's in 1998 require that the MCO's:

shall conduct outreach activities to assist enrollees make and keep EPSDT appointments for eligible children. The outreach activities shall include every reasonable effort, including telephone calls, scheduling of appointments for recipients, mailed reminders and personal visits, to contact parents, guardians of children, or the children themselves, if appropriate, based on the child's age, who are due for, or who have failed to keep appointments for, EPSDT screens and laboratory tests set forth in the District's periodicity schedule, immunizations, or follow-up treatment to correct or ameliorate a defect identified during an EPSDT screen or laboratory test, or have otherwise not obtained EPSDT screens[,] laboratory tests, immunizations, follow-up treatment or other services, in order to assist them to obtain such services.

Defendants shall monitor these activities and enforce these contractual provisions in order to assure that they are fully carried out.

39. Defendants shall require all MCO's in all contracts entered, renewed, extended and/or modified after January 1, 1999, to make every reasonable effort to contact parents, guardians of children, or the children themselves, if appropriate, based on the child's age, who are due for, or who have failed to keep appointments for, EPSDT screens and laboratory tests set forth in the District of Columbia periodicity schedule issued in accordance with 42 U.S.C. 1396d(r)(1)(A)(i), 1396d(r)(2)(A)(i), 1396d(r)(3)(A)(i), 1396d(r)(4)(A)(i), immunizations, or follow-up treatment to correct or ameliorate a defect identified during an EPSDT screen or laboratory test, or have otherwise not obtained EPSDT screens, laboratory tests, immunizations, follow-up treatment or other services, in order to assist them to obtain such services. Such contracts shall provide that "every reasonable effort" shall include, at a minimum, a telephone call or mailed reminder prior to the due date of each visit, scheduling of appointments for recipients, and, in the case of a missed appointment, a telephone call or mailed reminder for the first missed appointment and, if there is no response, a personal visit to urge the parent or guardian to bring the child for his or her EPSDT appointment. The contracts may provide that a personal visit need not be made if the MCO determines that the specific neighborhood or apartment building is dangerous for such a visit during the particular time of day involved and the MCO retains documents that state the specific reasons why no personal visit was made. The contracts need not (a) require the MCO's to make useless efforts to contact Medicaid

recipients using these methods, such as telephone calls need not be made if it is known that the recipients have no telephone or mailings need not mailed or personal visits attempted if an address for the recipient cannot be ascertained after reasonable efforts to obtain it, or (b) preclude the MCO's from taking other actions to contact Medicaid recipients. The contracts shall also require MCO's to maintain records showing the information set forth in paragraph 37 above and the efforts made to assist recipients to obtain EPSDT services that are set forth in this paragraph. Plaintiffs' counsel shall have access to these records through Defendants' counsel to ensure that MCO's are complying with this paragraph. While these requirements shall be explicitly set forth in the contract, the contract need not include the exact language of this paragraph. Defendants shall monitor these activities and enforce these contractual provisions in order to ensure that they are fully carried out.

40. If the definition of "every reasonable effort" set forth in paragraph 39 above proves infeasible or ineffective after two years under contracts including that definition, either party may inform the other party and the parties shall attempt in good faith to agree on an alternate definition. If the parties' efforts are not successful after thirty (30) days, either party may bring the issue to the Monitor. The Monitor shall report to the Court on the issue. Each party shall have thirty (30) days from the date of the Monitor's report to comment before the Court takes any action.



41. Defendants shall ensure that the MCO's train all EPSDT providers, during the first year of the contract and at least biannually thereafter, about the current requirements for EPSDT and shall develop a monitoring program for the purpose of ensuring, on at least a biannual basis, that each physician providing EPSDT services has the necessary equipment and knowledge to perform such services in accordance with standard medical practice. Defendants shall send any HCFA directions or guidance relevant to an MCO's obligation to implement the EPSDT program to each MCO within a reasonable time after receipt, not to exceed thirty (30) days unless unusual circumstances (such as the need to seek clarification from HCFA) make such transmittal in thirty (30) days unreasonable. Defendants shall direct each MCO to provide such information, when relevant, to each EPSDT provider within the MCO's network within ten (10) days of receipt by the MCO. Defendants shall report the activities of the monitoring program to the Court, the Monitor and Plaintiffs' counsel, annually, with the first report due no later than June 1, 1999.

42. Defendants shall provide each physician participating in the EPSDT program with a list of specialists to whom referrals may be made for screens, laboratory tests and corrective treatment. Defendants shall operate a telephone information service that functions during normal business hours to respond to inquiries from providers and EPSDT recipients or their parents or guardians concerning EPSDT referrals.

43. The contracts that Defendants are entering into with MCO's in 1998 provide that:

(a) the MCO shall meet a 75% participant ratio, as defined by the HCFA State Medicaid Manual, Section 5360.B and computed in accordance with the HCFA State Medicaid Manual, Section 2700.4 (hereafter "participant ratio") for 1998 for all children enrolled with the MCO.

(b) the MCO shall meet an 80% participant ratio for 1999 for all children enrolled with the MCO.

(c) Each screen, laboratory test and immunization must be conducted within sixty (60) days of its due date, based on the child's age, under the periodicity schedule or immunization schedule for all children over the age of two (2) years and within thirty (30) days of its due date for all children under the age of (2) two years.

44. The contracts that Defendants are entering into with MCO's in 1998 further provide that:

b. If Provider fails to meet or show progress toward meeting the EPSDT performance standards in paragraph "a" of this section or ensure that children have their age-appropriate screens updated for missed opportunities, the District shall take any or all of the following actions (depending on the extent of the failure to comply or to demonstrate progress with the standards):

(1) require the Provider to develop and implement a corrective action plan, that is approved by the District and is designed to increase Provider's EPSDT participation ratio;

- (2) require the Provider to utilize the Department's EPSDT case management program; or
- (3) withhold an amount from the Provider's payment, pursuant to Article 11, section A.3 at a rate of \$45 for each enrollee that is required to be added to the numerator in Provider's EPSDT participation ratio to comply with the performance standards in paragraph "a" of this section.

If any MCO fails to comply with the participant ratio percentage set forth in paragraph 43 above, Defendants shall take the following actions:

(a) In fiscal year 1998, if the MCO has a participant ratio of less than 65%, it shall be required to develop and implement an effective corrective action plan;

(b) In fiscal year 1999, if the MCO has a participant ratio of less than 70%, it shall be required to develop and implement an effective corrective action plan and, if the MCO has a participant ratio of less than 60%, it shall also be required to pay Defendant at a rate of \$45 for each enrollee that is required to be added to the numerator in the MCO's EPSDT participant ratio to meet the 70% requirement in the contract.

Plaintiffs' counsel shall have the opportunity to comment within 15 days of their receipt of any corrective action plan before approval by Defendants. Defendants shall enforce these contractual requirements and the corrective action plans.

Defendants shall inform the MCO of the date that they have provided the corrective action plan to plaintiffs. Plaintiffs

shall keep any such corrective action plans confidential for a period of 15 days after receipt. During those 15 days, if the MCO believes that the corrective action plan contains confidential information, it may move this Court for an Order that the confidential portions of the corrective action plan be subject to a protective order. If such a motion is made by the MCO, plaintiffs shall keep the corrective action plan confidential until the resolution of the motion. The foregoing procedures concerning claims to confidentiality by MCO's do not affect defendants' obligations under the District of Columbia Freedom of Information law, D.C. Code §1-1521, et seq.

45. In all contracts entered, renewed, extended and/or modified with MCO's on or after January 1, 1999, Defendants shall, at a minimum, require the MCO's:

(a) to provide each EPSDT screen, laboratory test and immunization within sixty (60) days of its due date, based on the child's age, under the periodicity schedule or immunization schedule for all children over the age of two (2) years and within thirty (30) days of its due date for all children under the age of two (2) years.

(b) to meet an 80% participant ratio for fiscal year 1999 and thereafter for all children enrolled with the MCO.

(c) In fiscal year 2000, to develop and implement an effective corrective action plan if the MCO has a participant ratio of less than 75% and, if the MCO has a participant ratio of less than 65%, it shall also be required to pay Defendants at least at

a rate of \$45 for each enrollee that is required to be added to the numerator in the MCO's EPSDT participant ratio to meet the 80% requirement.

(d) In fiscal year 2001, to develop and implement an effective corrective action plan if the MCO has a participant ratio of less than 80% and, if the MCO has a participant ratio of less than 70%, it shall also be required to pay Defendants at least at a rate of \$45 for each enrollee that is required to be added to the numerator in the MCO's EPSDT participant ratio to meet the 80% requirement.

(e) In fiscal year 2002 and any year thereafter, to develop and implement an effective corrective action plan if the MCO has a participant ratio of less than 80% and, if the MCO has a participant rate of less than 75%, it shall also be required to pay Defendants at least at a rate of \$45 for each enrollee that is required to be added to the numerator in the MCO's EPSDT participant ratio to meet the 80% requirement.

Plaintiffs' counsel shall have the opportunity to comment on any corrective action plan before approval by Defendants. Defendants shall enforce these contractual requirements and the corrective action plans.

(f) If in soliciting bids or negotiating modifications to the contracts described in this paragraph, Defendants cannot secure such contracts or such modifications without an increase in cost above the federal upper payment limit for capitation rates as a result of the requirements set forth in this paragraph and

paragraph 39, Defendants may move the Court to modify the requirements set forth in this paragraph and in paragraph 39. In making any such motion, Defendants shall bear the burden to show that the requirements of this paragraph and paragraph 39 are the provisions which caused the upper payment limit to be exceeded.

46. Defendants shall comply with the HCFA State Medicaid Manual, Section 2700.4, in completing the HCFA Form 416. Defendants shall ensure that MCO's comply with the HCFA State Medicaid Manual, Section 2700.4, in providing information to be used in the HCFA Form 416 relating to whether the participant ratios in paragraphs 43, 44, and 45 above have been complied with. Defendants shall include a provision in the contracts with MCO's that requires the MCO's to submit to Defendants adequate information for Defendants to produce the reports required by paragraph 47 below. Defendants shall use an independent party to verify annually the data from each MCO used to compile the HCFA Form 416 used by Defendants to determine the participant ratios in paragraphs 43, 44, and 45. Defendants shall provide the results of the verification and the data for each MCO to Plaintiffs' counsel.

47. Defendants shall provide quarterly reports to the Court, the Monitor, and Plaintiffs on the provision of EPSDT services. The reports shall contain the following information for each MCO:

(a) Number of individuals eligible for EPSDT enrolled with the managed care organization (MCO). The total unduplicated number of individuals under age 21 determined to be eligible for Medicaid, distributed by age (as defined in the line 1 instructions for the HCFA Form 416 set forth in the HCFA State Medicaid Manual, Section 2700.4). Unduplicated means that an eligible individual is reported only once,

although he or she may have had more than one period of eligibility during the reporting period.

(b) Number of individuals receiving at least one initial or periodic screening service from the MCO. The unduplicated count of individuals, distributed by age, who received one or more documented initial or periodic screenings (as defined in the line 7 instructions for the HCFA Form 416 set forth in the HCFA State Medicaid Manual, Section 2700.4) during the quarter.

(c) Actual Number of Initial and Periodic Screening Services. The number of initial and periodic EPSDT child health screening examinations during the quarter (as defined in the line 10 instructions for the HCFA Form 416 set forth in the HCFA State Medicaid Manual, Section 2700.4).

(d) Number of individuals referred for corrective treatment. The unduplicated count, distributed by age, of individuals who, as the result of at least one health problem identified during an EPSDT child health screening, excluding vision, dental, and hearing services, were scheduled for another appointment with the screening provider or referred to another provider for further needed diagnostic or treatment service (as defined in the line 12 instructions for the HCFA Form 416 set forth in the HCFA State Medicaid Manual, Section 2700.4). This does not include correction of health problems during the screening examination or referrals for vision, dental, and hearing services.

(e) Number of individuals receiving corrective treatment. The unduplicated count, distributed by age, of EPSDT-eligible individuals who received corrective treatment from a specialist.

(f) Number of individuals receiving vision assessments. The unduplicated count, distributed by age, of individuals who received an assessment to determine the need for diagnosis and treatment for defects in vision (as defined in the line 13 instructions for the HCFA Form 416 set forth in the HCFA State Medicaid Manual, Section 2700.4).

(g) Number of individuals receiving dental assessments. The unduplicated count, distributed by age, of individuals who received preventive dental services (as defined in the line 14 instructions for the HCFA Form 416 set forth at HCFA State Medicaid Manual, Section 2700.4).

(h) Number of individuals receiving hearing assessments. The unduplicated count, distributed by age, of individuals who received an assessment to determine the need for diagnosis and treatment for defects in hearing (as defined

in the line 15 instructions for the HCFA Form 416 set forth in the HCFA State Medicaid Manual, Section 2700.4).

The first report shall be due on October 1, 1998, and shall cover April 1, 1998, through June 30, 1998. Thereafter, reports shall be due one hundred and twenty (120) days after the conclusion of each quarter. In addition, Defendants shall produce to Plaintiffs the HCFA Form 416 for each year within fourteen (14) days of its submission to the federal government.

48. (a) The covenants, corrective action plans, and penalties set forth in paragraphs 44 and 45 above are intended as the actions reasonably required of Defendants for assuring that the MCO's, as far as possible, will attain a participant ratio of 75% for 1998 and 80% for 1999 and thereafter. However, the parties and the Court recognize that they do not have sufficient information and experience to be certain that these ratios can be attained, even if the MCO's and Defendants take such actions. It may be that the participant ratios required in paragraphs 43(a) and (b) and 45(b) are attainable through the enforcement mechanisms prescribed in paragraphs 44 and 45, but they may be unattainable despite such enforcement mechanisms. This paragraph is therefore intended to provide a mechanism to determine whether the actions of Defendants and the MCO's under this Order constitute a reasonable effort, consistent with this Order, to achieve the participant ratios required under the MCO contracts and this Order. When such participation deficits occur, the Court will scrutinize Defendants' performance in achieving the specified participant ratios if, but only if, the participant ratios achieved are under 60% in 1999, 65%



in 2000, 70% in 2001, 75% in 2002 and 80% in 2003 and each year thereafter.

(b) Defendants shall calculate the participant ratio for fiscal year 1998, which shall become the base year. If, in any subsequent year, the percentage ratio for that year set forth in subparagraph (a) above is not met and the ratio is also less than the 1998 base year ratio plus 5% for each subsequent year (but not more than 80%) (e.g., for 2000, the figure is the 1998 participant ratio, plus 10%), Defendants shall by April 1 of the following year, provide a detailed explanation to Plaintiffs of (i) the actions taken by the MCO's in 1998 and subsequent years through the year in issue to meet the relevant participant ratio in paragraphs 43(a) and (b) and 45(b), and (ii) whether it would be reasonable and effective to direct Defendants to require the MCO's to take further actions that are consistent with the MCO contracts.

(c) If Plaintiffs are satisfied with Defendants' explanation, Defendants shall be deemed in compliance with the participant ratio for that year. If Plaintiffs are not satisfied with Defendants' explanation, they may prepare a written response and present it, along with Defendants' explanation, to the Monitor. The Monitor will then consult with the parties and prepare a report to the Court addressing whether it would be reasonable and effective to direct Defendants to require the MCO's to take further actions consistent with the MCO contracts. The Monitor's report shall be due within 30 days of the issue being presented to the Monitor.

(d) The parties shall have thirty (30) days after submission of the Monitor's report to the Court within which to submit comments on such report. If the Court determines that it would be reasonable and effective, in order to achieve a participant ratio meaningfully higher than in the previous year, to direct Defendants to require the MCO's to take further actions consistent with the MCO contracts, the Court shall determine what relief, if any (other than contempt sanctions), shall be afforded to Plaintiffs. If, on the other hand, the Court determines that directing further actions consistent with the MCO contracts would be either unreasonable or ineffective in achieving a participant ratio meaningfully higher than in the previous year, Defendant shall be deemed in compliance with the participant ratio for that year. However, in this latter event, if the Court concludes that there are further actions that would be reasonable and effective in achieving such a meaningfully higher participant ratio, but that such actions are unavailable under the terms of the MCO contracts, Plaintiffs may, upon motion, seek further relief from the Court that Defendants, under the circumstances, could reasonably be expected to provide.

49. Defendants' periodicity schedule shall require dental services at least annually for children age six (6) through twenty (20).

50. Defendants shall follow the federal requirements set forth in the HCFA State Medicaid Manual, Section 2700.4, in reporting line 12 on the HCFA Form 416 concerning referrals or

comparable provisions in future forms for treatment of conditions discovered in the course of EPSDT screens and laboratory tests.

51. Beginning no later than the date of entry of this Order, Defendants shall offer scheduling and transportation assistance prior to the due date of each eligible child's periodic screening, laboratory tests and immunizations as required by the HCFA State Medicaid Manual, Section 5150, when this assistance is requested and necessary.

52. Beginning no later than the date of entry of this Order, Defendants shall assure that children and their parents or guardians shall be provided assistance, when requested and necessary, with transportation to EPSDT appointments.

53. Beginning no later than the effective date of each of the MCO contracts Defendants shall ensure that the MCO's provide case management services, as described in the HCFA State Medicaid Manual §4302 and as defined by 42 U.S.C. 1396n(g)(2), to children with a need for such services under the EPSDT program. No later than January 15, 1999, and no later than July 15, 1999, Defendants shall report to the Monitor and Plaintiffs' counsel concerning the implementation of case management services to children with a need for such services under the EPSDT program. Defendants shall consider in good faith any comments by Plaintiffs' counsel concerning its provision of case management services under the EPSDT program.

VI. EPSDT Notice (Claim 7)<sup>2/</sup>

54. Defendants shall effectively inform all pregnant women, parents, child custodians, and teenagers who are sui juris and who have been determined to be eligible for Medicaid benefits, including individuals who are blind or deaf, or who are illiterate, of the availability of early and periodic, screening, diagnostic, and treatment services (hereafter "EPSDT") and the need for age-appropriate immunizations against vaccine-preventable diseases. Notice shall be provided to all such individuals, to all applicants for Medicaid, and to all Medicaid recipients, at least annually, in writing. In addition, oral notice must be given at least annually if such individual meets with a social service representative. The oral and written notice shall use clear and non-technical language, and shall be designed to effectively inform EPSDT-eligible individuals about the benefits of preventive care, the services available under the EPSDT program, where and how to obtain those services, the cost-free nature of the services, and the availability of necessary scheduling and transportation assistance.

55. Defendants shall establish and maintain a helpline that explains EPSDT services in Spanish which is available whenever no Spanish-speaking DHS employee is available to give an oral explanation and the person to whom notice is to be given understands only Spanish.

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<sup>2/</sup>The following provisions in this Section of the Order shall relate to all Medicaid recipients under the age of twenty-one (21) (hereafter "child" or "children").

56. Defendants shall develop a program, to be implemented by February 1, 1999, to provide adequate notice about the EPSDT program to eligible persons who are blind or deaf, and who cannot read or cannot understand English. Defendants submitted the plan to the Court, the Monitor and Plaintiffs' counsel on March 16, 1998, and Plaintiffs have provided Defendants and the Monitor with their response to the Plan. If the parties are unable to agree on the terms of the Plan and its implementation, the Monitor shall evaluate the Plan and submit a report on the Plan and its implementation to the Court and counsel. The parties shall have fifteen (15) days thereafter within which to submit comments on the report, and prior to the Court taking any action.

57. Defendants shall require all providers of Medicaid services to give all pregnant women, parents, child custodians, and teenagers who are sui juris, and who have been determined to be eligible for Medicaid benefits, including individuals who are blind or deaf, or who are illiterate, written material describing EPSDT services in simple terms when they first visit the provider and on subsequent visits, unless the provider has given the recipient such material within the preceding year. Defendants shall also require all providers of Medicaid services to explain the EPSDT program orally to such recipients at least annually to all recipients who use Medicaid services during the year, except that so long as the Defendants' periodicity schedule requires only biannual EPSDT screening for children over the age of six (6), such children, and/or their parents or guardians, need only be orally informed

about EPSDT biannually. Defendants shall require providers to call the Spanish helpline described above whenever the person to whom notice is to be given understands only Spanish.

58. The written and oral notices set forth in paragraphs 54, 55 and 57 above shall include:

(a) An explanation of all EPSDT medical services, including screens, laboratory tests, immunizations and corrective treatment;

(b) An explanation of the importance of these services, and a strong recommendation that the services be utilized;

(c) An explanation of the right of the child to follow-up treatment to correct or ameliorate any medical need identified during a screen or laboratory test;

(d) An explanation of the right to scheduling assistance in order to make EPSDT appointments and the procedures for obtaining such assistance; and

(e) An explanation of the right to transportation assistance and the procedures for obtaining such assistance for EPSDT appointments.

In addition, Defendants shall provide EPSDT eligible applicants at the time of application and at least annually thereafter, a pocket-sized schedule of EPSDT screens, laboratory tests and immunizations.

59. Beginning no later than November 15, 1998, Defendants shall develop and implement effective coordination of EPSDT notice and outreach with the Department of Health, the District of

Columbia public school system, Headstart programs, the Women, Infants and Children nutrition program, public housing programs, Title XX programs, and the District's Part H early intervention program. The plan for coordination shall be provided to the Court, the Monitor and Plaintiffs' counsel within ten (10) days of its completion. The Monitor shall submit, within fifteen (15) days thereafter, an evaluation of the coordination plan, and shall monitor its implementation.

60. Plaintiffs may submit to the Court at any time after October 15, 1998, information concerning the effectiveness of EPSDT notice in the District of Columbia. If the Court determines that Plaintiffs have raised a substantial issue as to such effectiveness, the Court shall request the Monitor to submit a report on appropriate measures to improve such effectiveness, including the need for, the feasibility and mechanics of, and the cost of a statistically valid study of the effectiveness of EPSDT notice in the District of Columbia. The parties shall have thirty (30) days after the submission of the Monitor's report within which to submit comments on such report, and prior to the Court taking any action. "Effectiveness of EPSDT notice" as used in this paragraph shall have the same meaning as the phrase "to inform effectively all EPSDT eligible individuals (or their families) about the EPSDT program" as set forth in 42 C.F.R. 441.56(a).

#### VII. Reimbursement Procedure for Class Members' Expenses

61. Defendants' Medicaid State Plan shall allow for corrective payments to Medicaid recipients who have incurred out-

of-pocket medical expenses that, but for Defendants' error, should have been paid by Medicaid.

62. Defendants shall provide corrective payments to Medicaid recipients who have incurred out-of-pocket medical expenses that should have been paid by Medicaid to all current and future Medicaid recipients and all those who were Medicaid recipients or were eligible for Medicaid at any time since March 2, 1990. Reimbursement of class members shall be made when the class member presents reasonable and reliable documentation or other evidence of their out-of-pocket expenses.

63. In an Order dated September 15, 1997, after considering the Monitor's report and the positions of the parties, the Court issued a Reimbursement Procedures Order setting forth the procedures for reimbursing Medicaid recipients for out-of-pocket expenses incurred since March 2, 1990. In an Order Partially Modifying the Reimbursement Procedures of the Amended Remedial Order of May 6, 1997, and the Reimbursement Procedures Order of September 15, 1997, entered on July 30, 1998, the Court set forth further procedures concerning reimbursement.

VIII. Monitoring Fees to Plaintiffs' Counsel

64. Plaintiffs' counsel may respond to all calls which come to their office and make reasonable inquiry to determine whether the caller is a member of the plaintiff class. If the caller is a member of the plaintiff class, Plaintiffs' counsel may provide the caller with legal assistance. The reasonable time and expenses of Plaintiffs' counsel in making such inquiry and providing such legal



assistance shall be deemed compensable monitoring of this Order under 42 U.S.C. § 1988 and applicable law interpreting that statutory provision. The hourly rate for handling the claims of individual class members shall be \$75/hour, regardless of the experience level of the lawyer who performs the work. This hourly rate shall be adjusted annually, beginning on January 1, 1999, based on the U.S. Department of Commerce Consumer Price Index for Legal Services.

65. Other reasonable attorney time by Plaintiffs' counsel in monitoring Defendants' compliance with this Order shall be compensated at the rate of \$315/hour for the time of Bruce J. Terris and Lynn Cunningham, and \$265/hour for the time of Kathleen L. Millian and Jane Perkins. Reasonable paralegal time shall be compensated at the rate of \$75/hour. If attorneys other than those mentioned specifically in this paragraph perform monitoring work, the parties shall use their best efforts to agree to an hourly rate for the attorney, which shall not exceed \$200/hour. These hourly rates shall be adjusted annually, beginning on January 1, 1999, based on the U.S. Department of Commerce Consumer Price Index for Legal Services.

66. The rates set forth in paragraphs 64 and 65 above for Plaintiffs' monitoring of Defendants' compliance with this Order were based on compromise and the parties do not intend these rates to apply for any purpose other than those set forth in paragraphs 64 and 65. Defendants take the position that the reasonable rates for Plaintiffs' counsel are lower than those set forth in

paragraphs 64 and 65 and Plaintiffs take the position that the reasonable rates are higher.

67. Plaintiffs may make an application for monitoring fees and expenses no more frequently than every six (6) months. If the parties cannot agree on the amount of fees and expenses, Plaintiffs may make a motion to the Court thirty (30) days after submission of the fees application to Defendants. The first such application may be submitted at any time after July 1, 1998. In addition to the costs of monitoring Defendants' compliance with this Order, the first application shall include all other fees incurred in this action since January 1, 1998, excluding those specified in paragraph 69(b) below.

68. Beginning on May 15, 1997, and continuing thereafter, Plaintiffs' counsel shall provide Defendants' counsel with a monthly statement of their fees and expenses associated with monitoring Defendants' compliance with the Remedial Order.

IX. Attorneys' Fees and Expenses through December 31, 1997

69. In full settlement of all claims by Plaintiffs for attorneys' fees and expenses through December 31, 1997, except as specifically stated below, Defendants agree to pay Plaintiffs a total of \$1,600,000. The Court vacates the Judgment for \$1,028,059.70 entered on March 12, 1998. Of the sum of \$1,600,000, \$611,940.30 was paid pursuant to the Consent Judgments of September 3, 1996, and January 14, 1997, and the Judgment of March 12, 1998. Defendants agree to pay Plaintiffs the remaining \$988,059.70 within forty-five (45) days of the date of entry of the Consent Judgment

submitted with this Order. This sum of \$988,059.70 shall bear interest, as provided in 28 U.S.C. 1961, from March 12, 1998, until paid. The sum of \$1,600,000 does not include the following:

(a) Payments made to Plaintiffs under the Consent Judgment Orders entered on June 2, 1997 (\$18,968.75, plus interest), and September 15, 1997 (\$15,100, plus interest);

(b) Plaintiffs' claim for reimbursement of their fees and expenses for monitoring the Partial Settlement Agreement of July 12, 1996, and the Agreement Pursuant to Paragraph 49 of the July 10, 1996, Partial Settlement Agreement, dated May 22, 1997, which have been incurred since May 8, 1997.

X. Future Change in Applicable Law and Motions for Modification

70. If Defendants believe that a change of law resulting in the elimination or reduction in federal funding or in the amendment or elimination of legal requirements affects any provision of this Order, and Defendants desire a modification of this Order, Defendants shall notify Plaintiffs' counsel. The notice shall specify the modification desired and the reasons therefor. If the parties cannot come to an agreement regarding the modification to this Order, the parties shall jointly move the Court, within ten (10) days of the District's notice to Plaintiffs, to determine the extent to which modification shall be made. The joint motion shall request that the Court establish an expedited briefing schedule and determination of this motion.

71. Except as provided in paragraph 70 above, either party shall have the right to move the Court for a modification of this Order at any time for any reason.

72. In determining motions for a modification of this Order under paragraphs 70 and 71 above, the general body of federal law governing motions to modify orders in contested matters pursuant to Rule 60(b) of the Federal Rules of Civil Procedure shall apply.

73. Defendants shall take no action contrary to this Order based on a proposed modification to this Order under paragraphs 70 and 71 above until this Court has determined the joint motion filed under paragraphs 70 and 71. If Defendants take or threaten to take such an action, Plaintiffs may seek injunctive relief from the Court. The only exception shall be if the federal government has eliminated or reduced funding to the District for a program subject to this Order and, as a result, the District has legally eliminated or reduced such program. In that event, Defendants shall notify Plaintiffs that they propose to take such action at least five (5) days prior to the effective date of Defendant's proposed action.

#### XI. Termination of this Order

74. As to Section II of this Order (Processing of Medicaid Applications (Claim 4)), this Order shall terminate when Defendants have satisfied the compliance standards set forth in paragraphs 8 and 12 above for three (3) consecutive years.

75. As to Section III of this Order (Processing of Medicaid Recertifications (Claim 5)), this Order shall terminate when

Defendants have satisfied the compliance standard set forth in paragraph 19 above for three (3) consecutive years.

76. As to Section IV of this Order (Eligibility Verification System (EVS) (Claim 5)), this Order shall terminate when Defendants have shown that the verification system, including both EVS and the back-up system, have accurately confirmed the eligibility status of 98% of all requests for eligibility verification for twenty-two (22) of twenty-four (24) consecutive months and accurately confirmed the eligibility status of at least 95% of all requests for each of the other two (2) months as provided in paragraph 34 above and have accurately confirmed the eligibility status of at least 98% of all requests for the one (1) month in the following calendar year chosen by Plaintiffs. If Defendants do not achieve at least 98% compliance in the month chosen by Plaintiffs, Section IV shall not terminate until Defendants have shown at least six (6) consecutive months of compliance with the 98% standard.

77. As to Sections V and VI of this Order (EPSDT Services (Claim 6) and EPSDT Notice (Claim 7)), this Order shall terminate when Defendants have complied for three (3) consecutive years beginning no earlier than fiscal year 1999 with the provisions of Sections V and VI and the participant ratio of the District of Columbia has been no less than 75% for the last year. Defendants may move to terminate Sections V and VI of this Order at any time after fiscal year 2001 if Defendants have complied for three (3) consecutive years with all the provisions of Sections V and VI, except those setting forth a particular participant ratio, even

though they have not achieved a participant ratio of 75% for the last year, if they can show, based on persuasive evidence as to the actions taken by MCO's and Defendants, that a higher participant ratio cannot be achieved by further reasonable efforts. Defendants shall have the burden of proof.

78. All other provisions of this Order shall conclude at the same time as the last of the Sections identified in paragraphs 74-77 above.

#### XII. Continuing Jurisdiction

79. The Court shall retain jurisdiction of this matter to make any necessary orders enforcing or construing this Order.

80. Before any party moves the Court to enforce or construe this Order, or pursuant to any provision in this Order, except for paragraph 73 above, it shall give the other party 10 days' notice of its intention. During that 10-day period, the parties shall negotiate in good faith in an effort to resolve the dispute without seeking a decision from the Court.

#### XIII. Construction of This Order

81. This Order shall be construed by its own terms. The presence or absence of a provision in the Court's previous orders or in any draft of this Order shall not be relevant to the meaning of the provisions of this Order.

#### XIV. Other Matters

82. All references to the HCFA State Medicaid Manual shall be to the current manual at the time of the event involved.

83. The Court recognizes that computer software programs which are date dependent may experience failures in operations as the year 2000 commences, the so-called Y2K disruption, despite the Defendants taking reasonable efforts to identify and correct such problems in advance. Should such disruptions prevent the Defendants from complying with any requirement of this Order, despite Defendants taking reasonable efforts to identify and correct such problems in advance, upon notice to the Court, the Monitor, and Plaintiffs, Defendants shall have the right to suspend the provisions of the Order affected during the first six (6) months of 2000. No month during which such provisions are suspended may be used to justify termination under Section XI of this Order as to the provisions suspended. If Defendants invoke this suspension, they must, within 30 days of giving the required notice, report to the Court, the Monitor and Plaintiffs of the efforts they have taken to date and any planned in the future to identify and correct the Y2K disruption.


AGREED:


Date:

1/8/99

Date:

1/8/99

  
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Counsel for Defendants

APPROVED AND ENTERED AS AN ORDER OF THIS COURT THIS 22nd DAY OF

January, 1998.

  
GLADYS KESSLER  
United States District Judge

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