

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF DIRECTOR

ACTION REFERRAL

TO  <i>Myers</i>	DATE  <i>5-6-09</i>
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<b>DIRECTOR'S USE ONLY</b>	<b>ACTION REQUESTED</b>
1. LOG NUMBER  <i>100628</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR  <i>Cleaved 5/6/09, letter attached.</i>	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>5-15-09</i>
	<input type="checkbox"/> FOIA DATE DUE _____
	<input type="checkbox"/> Necessary Action

<b>APPROVALS</b> (Only when prepared for director's signature)	<b>APPROVE</b>	<b>* DISAPPROVE</b> (Note reason for disapproval and return to preparer.)	<b>COMMENT</b>
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**RECEIVED**

MAY 06 2009

Department of Health & Human Services  
OFFICE OF THE DIRECTOR



April 6, 2009

O Marion Burton, M.D., Medical Director  
South Carolina Department of Health and Human Services  
P.O. Box 8206  
Columbia, South Carolina, 29202-8206

Dear Dr. Burton,

I am writing this letter to encourage the South Carolina Department of Health and Human Services ("HHS") to reimburse physicians for performing visual evoked potential ("VEP") testing for Medicaid eligible children.

As you aware, Select Health of South Carolina has refused to reimburse physicians for VEP testing. I believe this decision not only has a harmful effect on the children of South Carolina, but may also contravene the laws related to medical necessity. I contend that the VEP test is medically necessary. VEP is the only objective test that can identify the brain's response to visual stimuli, thus allowing it to detect amblyopia at an early age. The U.S. Preventive Services Task Force (USPSTF) is the leading independent panel of private-sector experts in prevention and primary care. Its recommendations are considered the "gold standard" for clinical preventive services. The USPSTF recommends early detection of amblyopia, strabismus and defects in visual acuity in children younger than 5 years. That is why most private insurance carriers and most Medicaid programs pay for this test. Not only can vision defects be recognized, but the prospect for successful treatment is greater when it is identified at a younger age.

Federal law requires state Medicaid programs to cover all "necessary health care, diagnostic services, treatment and other measures . . . to correct or ameliorate defects and physical and mental illnesses and conditions." 42 U.S.C.A. § 1395d(r)(5). The South Carolina Physicians Provider Manual states that medically necessary means "that the service is directed toward the maintenance, improvement, or protection of health or toward the diagnosis and treatment of illness or disability." See South Carolina Physicians Provider Manual p. 1-11.

"The decision of whether or not certain treatment or a particular type of surgery is "medically necessary" rests with the individual recipient's physician and not with clerical personnel or government officials." *Pinneke v. Preisser*, 623 F.2d 546, 549 (8th Cir. 1980). "The best indicator for determining the medical appropriateness of treatment rests with a patient's physician." *Montoya v. Johnson*, 654 F.Supp. 511, 513 (W.D. Tex. 1987). Other courts have held that the physician is the "sole arbiter" of medical necessity. *Rush v. Parham*, 625 F.2d 1150, 1155 (5th Cir. 1980). The state can review the physician's determination, however, the state must defer to the recommendation of the treating physician.

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Moreover, an examination of the legislative history of the Medicaid Act demonstrates that Congress intended medical judgments to play a primary role in the determination of medical necessity. Id. citing S. Rep. No. 89-404, at 1943 (1965) (“the physician is to be the key figure in determining utilization of health services . . . it is the physician who is to decide upon admission to a hospital, order tests, drugs, and treatments[.]”).

VEP testing is not simply some exotic, brand new screening technique. It has been utilized for over 40 years. Using methods like the Enfant Pediatric Vision Testing (“Enfant”) system, physicians have been able to identify and then treat many types of eye deficiencies at a much earlier stage than under standard vision testing methods.

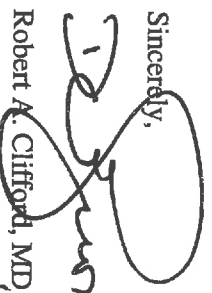
This procedure is approved by the Federal Drug Administration (“FDA”) and is reimbursed under Medicare and most private pay insurance plans. In addition, the December 2004 Journal of the American Association of Pediatric Ophthalmology and Strabismus published a study that showed Enfant had a ninety-seven (97) percent sensitivity detecting vision deficits in children as young as six months of age. Each year, approximately 200,000 children in the United States are born with visual deficits, making this condition much more common than most other pediatric health issues. Early detection leads to better treatment and improved vision health for children.

Most importantly however, physicians throughout South Carolina have seen the benefits of VEP testing and employ it on a daily basis. Pediatricians in this state strongly contend that VEP should be a core test for vision assessment. It is a medical necessity in the eyes of most South Carolina pediatricians and Medicaid should reimburse VEP testing. Early detection of childhood vision deficiencies is a medical necessity for South Carolina’s children.

I hereby request that SCDHHS work with the pediatric community to identify an appropriate diagnostic code to reimburse for VEP testing outside the bundled rate for EPSDT screening. The identification of a specific code will enable pediatricians across our state to continue to employ this critical test to recognize and treat special vision problems in children at an age where successful treatment can occur.

Thank you for your consideration in this matter. Please do not hesitate to contact me with any questions.

Sincerely,



Robert A. Clifford, MD, FAAP

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State of South Carolina  
Department of Health and Human Services

Log # 628  
✓

Mark Sanford  
Governor

Emma Forkner  
Director

May 6, 2009

Robert A. Clifford, MD, FAAP  
1952 Long Grove Drive Suite 202  
Mt. Pleasant, SC 29464

Re: Visual evoked potential screening for infants and children during routine well-child visits

Dear Dr. Clifford:

Thank you for corresponding regarding this matter. I certainly concur with your concern and those of the US Preventive Services Taskforce in recognizing the need for early detection of amblyopia, strabismus and vision defects in young children. This particular technology, until recently, has been utilized mainly by vision specialists and particularly pediatric ophthalmologists. This technology, like many others, is indeed becoming more applicable to routine office base practice. Currently, however, the American Academy of Pediatrics does not recommend this level of vision screening for routine and periodic well-child visits.

If an eye condition, including amblyopia, is suspected during routine well-child (such as EPSDT encounters) the South Carolina Medicaid program will certainly support testing necessary to further evaluate the concern. Like many state Medicaid agencies, the South Carolina Department of Health and Human Services will cover vision evoked potentials when necessary for diagnosis and treatment. Normally these definitive measures would be performed by a pediatric ophthalmologist or vision specialist. Meanwhile, we will continue to monitor recognized best practices and appropriate care.

Thank you for your advocacy in this matter and caring for South Carolina Medicaid beneficiaries. If you would like to speak with me further regarding this please call 803-255-3400 or 803-898-2580.

Sincerely,

O. Marion Burton, MD  
Medical Director