



Funding for SGDs in 2015: Updates & Implications for the AAC Community

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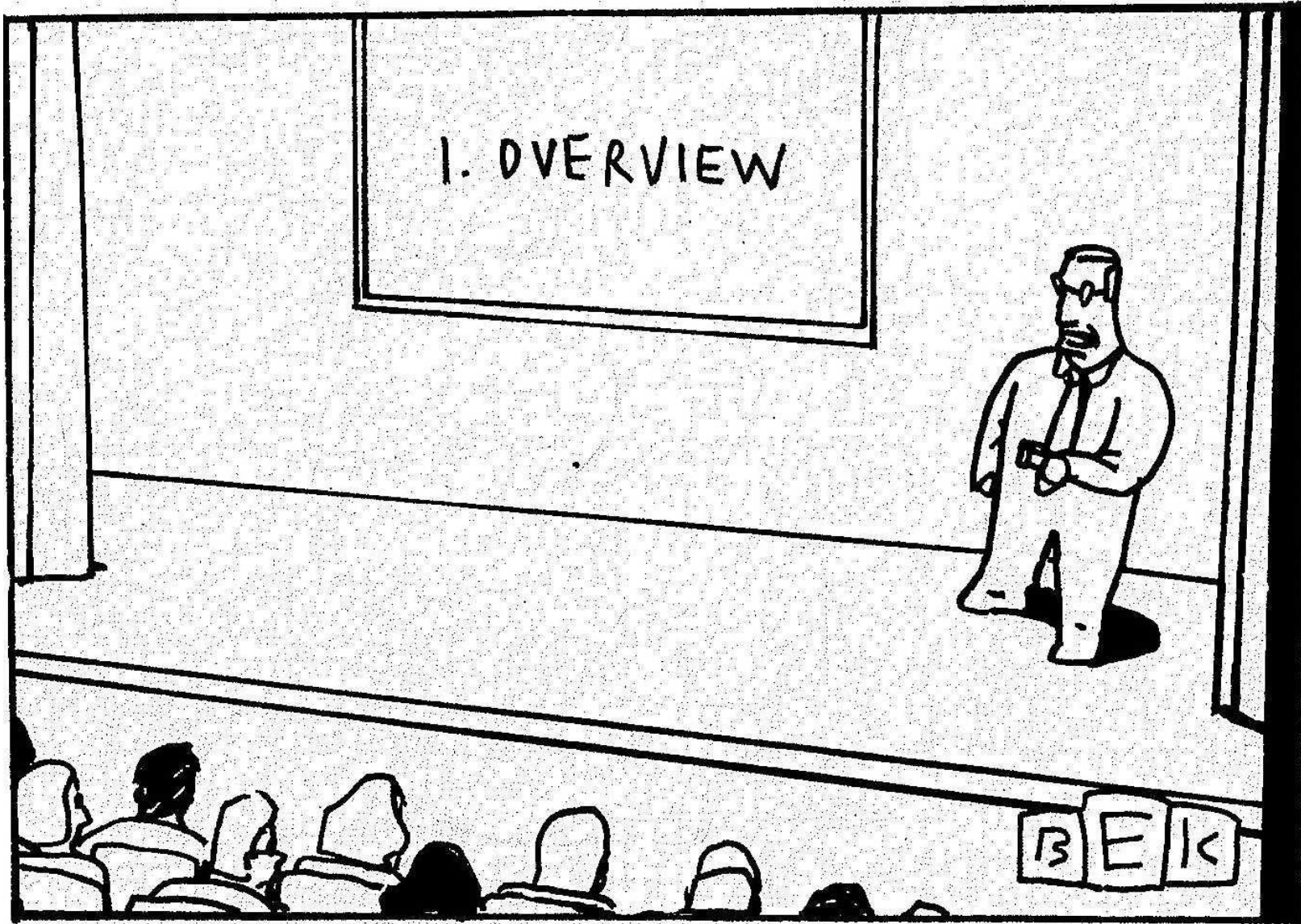
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"First, I want to give you an overview of what I will tell you over and over again during the entire presentation."

SGD Funding Sources

- Health Benefits Programs:
 - Medicare
 - Medicaid
 - Insurance policies and employer sponsored health benefit plans
 - Tricare
 - Federal Employee Health Benefits Program
 - Department of Veterans Benefits
- Special Education
- Vocational Rehabilitation
- Telecommunications Equipment Distribution Programs

Medicare SGD Coverage Chronology-1: 1981–2013

- Origins: Earliest known Medicare SGD approval (1981)
- Dark Ages – National Coverage Decision declares SGDs are “convenience items” and not covered (Late 1980s – 1999)
- First Medicare Reconsideration of SGD coverage (1999-2000)
- Golden Age (2001-2013):
 - NCD for SGDs (1/1/01) supports SGD coverage when needed to meet daily communication needs. All diagnoses covered. SLP evaluation report and recommendation controls SGD access.
 - NCD initially excluded coverage of computer based SGDs. Corrected 5/01. All SGD models, including “dedicated” computer-based SGDs are covered.
 - SGDs can have the capability for unlocking and environmental control. Medicare staff knew this.
 - SGDs can be unlocked after delivery. Medicare staff knew this. Some SGDs are unlocked at beneficiary request and expense.
 - Eye tracking accessories are covered.
 - Approximately 2000 SGDs purchased by Medicare per year.
 - No overuse or misuse of the benefit: only people with severe communication impairment get SGDs.
 - Carry over effect: great expansion of SGD coverage and access by insurers, Tricare and Medicaid.

Medicare SGD Coverage

Chronology-2: 2013-2014: Trouble Begins

- Eye Tracking Accessories
 - In late 2013, a proposal was submitted for a new code specifically for eye tracking accessories. For general computer access, *not* for SGDs. Rejected. Rules state clearly Medicare will pay only for accessories that connect to DME items; computers are not DME.
 - In late 2013, Medicare begins denying payment claims for SGD eye tracking accessories.
- Capped Rental
 - Even at low volume (2000 SGDs/year) SGDs' very high per unit cost causes Medicare to take notice; one of the SGD codes is one of the most costly among all Medicare DME.
 - In 2013, Medicare reinterpreted the law governing how Medicare pays for DME items. Its goal was to save money. As a result SGDs (and about 100 other items) were re-classified for Medicare payment as "capped rental" DME, effective April 1, 2014
 - In early 2014, Medicare rejects requests to exempt SGDs from capped rental or to delay the start date for capped rental.
 - Capped rental payment for SGDs went into effect 4/1/14.

Medicare SGD Coverage

Chronology-3: 2014: Trouble Continues

- Device Functionality

- In late February 2014, Medicare issues a mis-named “coverage reminder” for SGDs.
- Rather than re-state current SGD coverage policy, it made substantial changes.
- Computer based SGDs are not covered.
- SGDs can have no functional capability beyond speech generation.
- Environmental control; phone control; and capability for unlocking are all expressly prohibited. Each is a were disqualifying feature for Medicare coverage and payment.
- Unlocking for non-speech generating uses is prohibited for the life of the device.
- Mandatory coding verification must occur before September 1, 2014.

Medicare SGD Coverage

Chronology–4: 2014-15: Additional Developments

- **April through late August, 2014**: efforts were made to persuade Medicare managers to withdraw the coverage reminder. Medicare staff refused to do so.
- **Late August, 2014**: Medicare delayed the deadline for “coding verification” from 9/1 to 12/1/14. This change had no substantive effect on Medicare beneficiaries.
- **September 11, 2014**: 200 Members of Congress wrote to Medicare to suggest ways to solve the SGD coverage issues. Medicare did not take the hint.
- **November 6, 2014**: Medicare (a) withdrew the “coverage reminder,” (b) eliminated the coding verification requirement, and (c) announced it was going to “reconsider” the NCD for SGDs. The expected completion date is 7/31/15. These changes have had no substantive effect on Medicare beneficiaries. The SGD manufacturers still refuse to allow SGDs to be “unlocked” during capped rental.
- **Early December, 2014**: Reconsideration comes with a 30 day initial comment period. More than 2000 comments were submitted.
- **December 17, 2014**: Medicare responded to the 9/11 Congressional Letter answering none of the points raised. Answers will come, if at all, at the end of the reconsideration process.
- **Late January, 2015**: the so-called *Steve Gleason Act* was introduced in Congress to eliminate SGD capped rental. It has not passed. Even if it passed, it is not clear how Medicare beneficiaries will benefit. It would not require coverage of computer based devices or coverage of devices with the capability for unlocking, environmental control or phone control. It also had a provision related to eye tracking accessory coverage. But it is unclear if it would have had any effect on Medicare denials of these items.

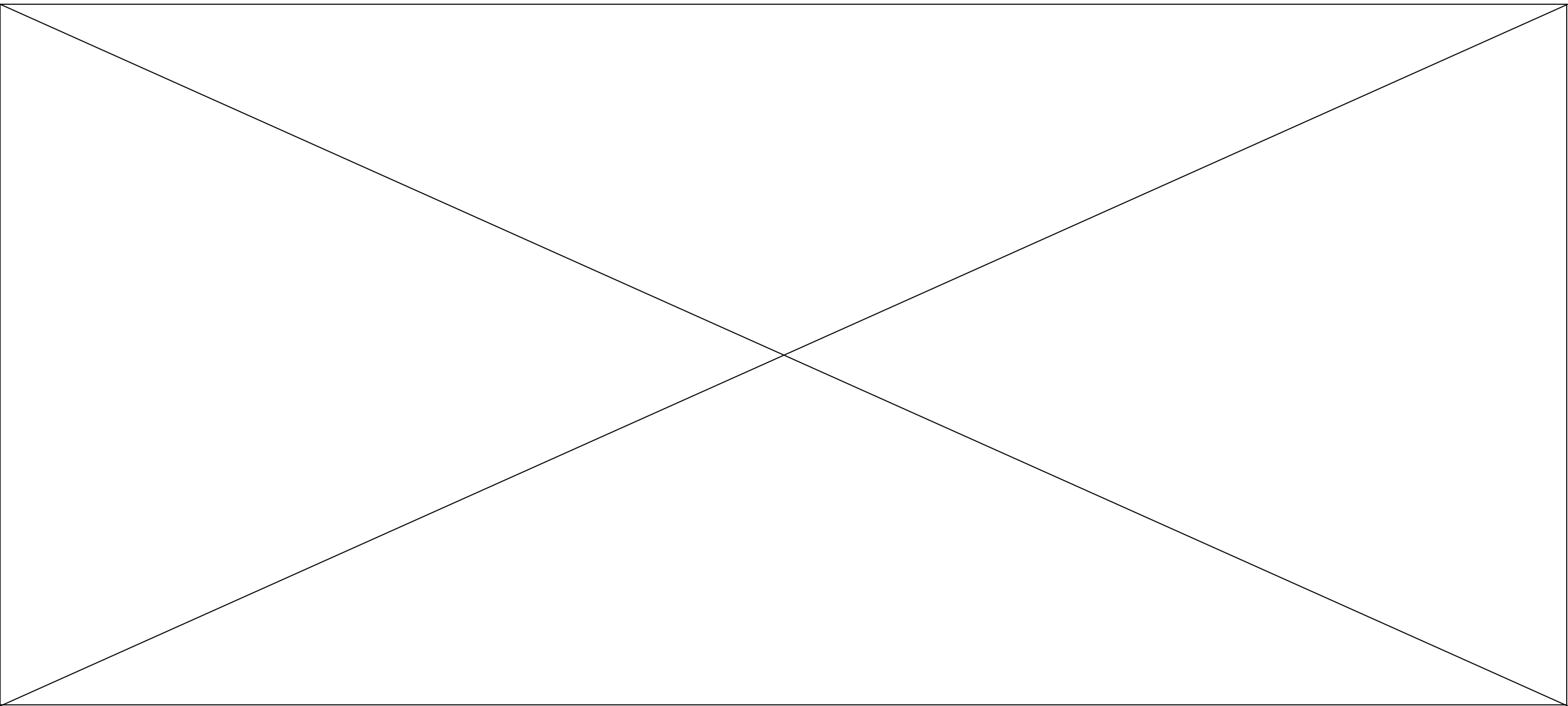
Implications for Medicare SGD Coverage

- Recent policy changes create many issues affecting Medicare SGD coverage:
 - What devices will Medicare cover and pay for? [Off the shelf computers; customized computers; both?]
 - What if any capabilities and functions beyond speech generation will Medicare allow SGDs to offer? [Will devices support environmental control or phone control; will they provide internet access?]
 - If Medicare allows access to non-speech generating capabilities and functions, when can that access begin? [Upon delivery; after the 13 month capped rental period?]
 - Is capped rental here to stay? [Is legislative action required; if the current bill fails, will legislative efforts continue; is there any chance CMS will revisit SGD capped rental on its own?]
 - Is capped rental really a beneficiary or SLP concern? [Is it “they sky is falling” or is the sky falling?]
 - Can adverse effects of capped rental be avoided for people who go into NFs or begin hospice care?
 - Is eye tracking accessory coverage going to be fixed?
 - Is eye tracking accessory coverage really a problem?
 - Will other programs adopt comparable limitations and if so what risks will that cause?

Medicaid SGD Coverage

- Medicaid has covered SGDs since the late 1970s.
 - All state Medicaid programs cover and provide SGDs for children and for adults.
 - Most states have SGD coverage guidelines.
 - Most of these guidelines follow the Medicare SGD coverage criteria.
 - Because most states copy the Medicare DME definition and copy Medicare's SGD coverage criteria, all SGD requests should be submitted for the “dedicated” model of the SGD.
 - Medicaid recipients are entitled to SGDs if they live at home or in nursing facilities.
 - Medicaid managed care organizations must cover SGDs just as the traditional Medicaid programs in those states have covered them. MCOs are not allowed to apply more restrictive coverage or medical need criteria than the traditional Medicaid program.

Medicaid SGD Coverage: Update 2015



Medicaid SGD Coverage 2015: Chased by a Rock

- For more than 30 years, states have been relentless in their efforts to control Medicaid spending. Most often, they have tried benefits exclusions or limitations, use of managed care, and payment rate cuts to achieve this goal.
- During this same period, the U.S. Supreme Court has been relentless in its effort to reduce the opportunity for people with disabilities to use the federal courts to protect their rights and access to benefits, such as Medicaid durable medical equipment items.
- Like Indiana Jones, we have stayed one step ahead. But the chase continues.
- Just last week, the U.S. Supreme Court issued a decision in a Medicaid case called *Armstrong*. It was a challenge by providers to Medicaid payment rates for certain services. The Supreme Court decision reversed long-standing policy: federal courts are now barred from hearing this type of challenge.
- Also, some Medicaid programs have proposed *specific treatment exclusions* and *diagnosis-based coverage limitations* for adult Medicaid beneficiaries. Although these issues were believed to be long-settled, some lower federal courts are ignoring earlier decisions. The specific treatment exclusion was upheld – was allowed – by the Court. The diagnosis based limitation on coverage was rejected, but an appeal is pending.
- For several years, CMS has had proposed rules that will affect the Medicaid “home health care services” benefit category, which is where DME is covered. These proposed rules include a nationwide definition of DME. Other provisions may address specific treatment exclusions. Final promulgation of this rule has been promised during 2015.

Implications for Medicaid SGD Coverage

- Medicaid programs are increasingly covering “TAC” (tablet + app + case) SGDs as SLPs recommend them more frequently and because their cost is lower. Access to a Medicaid supplier remains a problem in some places, but this issue will resolve by itself.
- States may be emboldened to limit or exclude SGD coverage for adults. Especially where SGD coverage resulted from federal court actions.
 - A way will have to be found to challenge them. The final rules related to Medicaid DME coverage may address this issue, making state obligations more clear and deterring states from imposing these limits and exclusions.
- States may be emboldened to cut payment rates for SGDs or DME generally, thinking these actions are immune from challenge.
 - A way will have to be found to challenge them.
- States will continue to use managed care (MCOs) which may lead to more denials based on the SGD supplier not being part of the MCO’s network.
 - All such denials should be appealed. Advocates and attorneys should be contacted to pursue them. SGD manufacturers should generate the facts necessary to defeat these denials for every state and have them available if this issue arises.

Insurance and Health Plan SGD Coverage

- Insurance policies and employer sponsored health plans have covered SGDs since the 1970s.
- SGD coverage and approval of funding requests increased greatly after Medicare's coverage policy changed in 2001. A detailed review of why SGDs should be covered by insurance and health plans and a database of insurers that approved SGDs through 2003-04 can be reviewed at http://aacfundinghelp.com/funding_programs.html#3
- All SGD recommendations submitted to insurers and health plans should be for the "dedicated" model of the SGD.
- SGD coverage and funding request approval is the norm and should be the expected outcome. SGD exclusion and denial of funding requests are by far the exception.
- Insurers and health plans should not deny SGD requests because the SGD manufacturer is not part of a provider "network."
- An appeal should be considered for all denials. The basis for denial must be reviewed against a policy's "*certificate of coverage*" or a plan's "*summary plan description*."
- Neither SLPs nor SGD manufacturers should pursue appeals (a) without express authority provided by the client; or (b) without first reviewing the case with an advocate or attorney.

Insurance and Health Plan SGD Coverage: Reviewing Denials

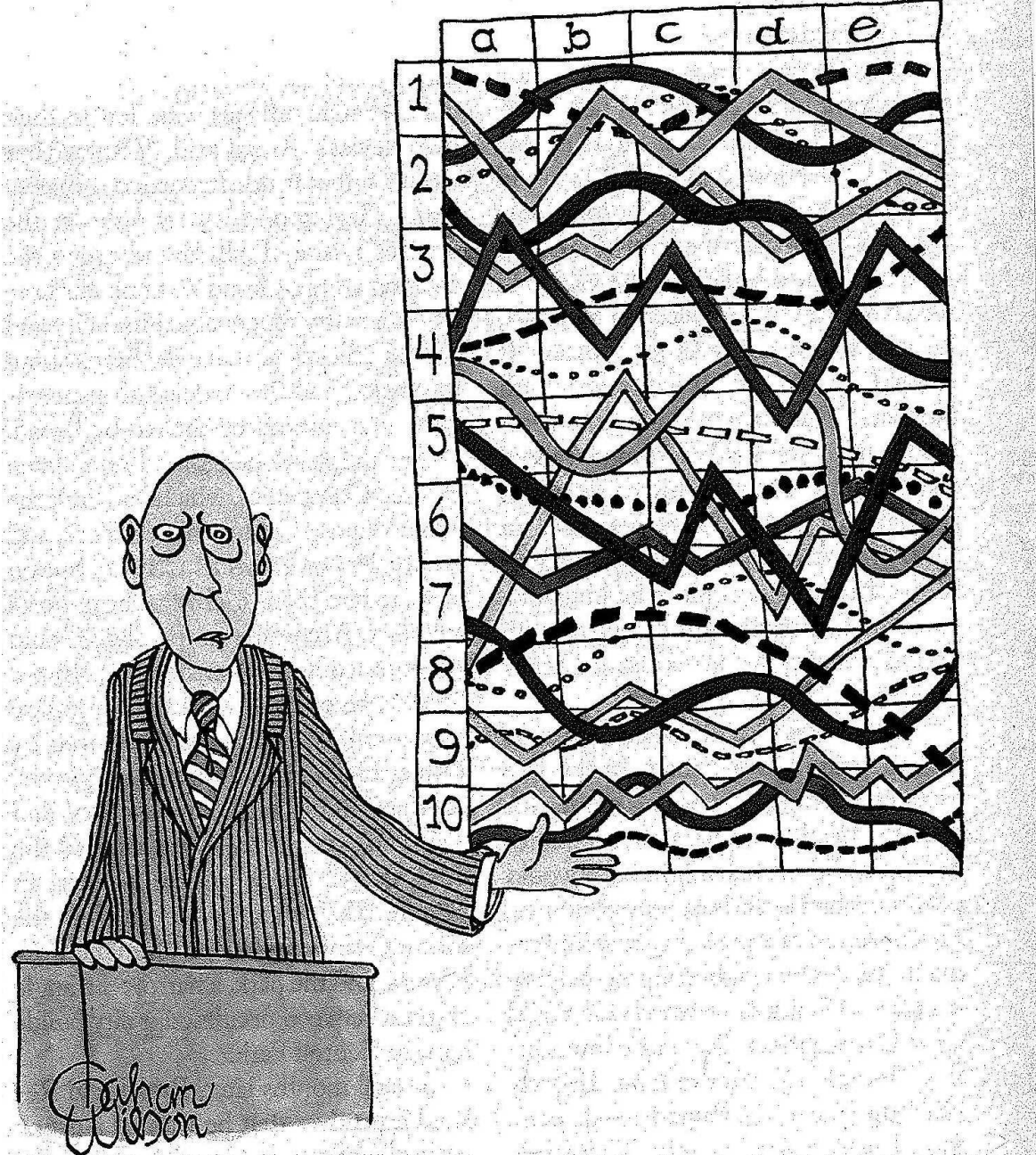
	Law governing	Denial: not covered, but no SGD reference in policy or plan	Denial: not medically necessary, but no SGD reference in policy or plan	Denial: exclusion, but no SGD reference in policy or plan	Denial: SGD exclusion and SGD referenced in policy or plan
Insurance Policy	State law of contracts, insurance, and autism mandate (if enacted)	Win appeal	Win appeal	Win appeal	Lose, unless autism mandate overlaps with client facts ADA does not allow challenges to policy content
Health Benefits Plan	ERISA	Win appeal	Win Appeal	Win appeal	No law; ERISA allows treatment specific exclusions Requests to plan to delete exclusion have been successful in several cases

Insurance and Health Plan SGD Coverage: Update 2015

- Affordable Care Act (ACA) provides new protections for SGD coverage and access:
 - ACA prohibits disability-based discrimination in insurance policy “benefits design” for “essential health benefits” (EHBs).
 - EHBs must be covered in all insurance policies.
 - EHBs include “rehabilitative and habilitative services *and devices*.”
 - SGDs are devices that serve a rehabilitative and a habilitative purpose.
 - The scope of EHBs must be at least *equal to* the scope of coverage in “benchmark plans.” Every state has a benchmark plan. <https://www.statereform.org/analyses/state-progress-on-essential-health-benefits>
 - If benchmark plans discriminate, they must be changed. In all states but four, SGDs are not excluded. They are “coverable.”
 - Several Federal Employee Health Benefits Program plans have complete SGD exclusions. These plans provide health benefits to several million individuals.
 - ACA prohibits “annual dollar limits” for EHBs. Several other FEHBP plans have \$ 1250 or \$ 500 annual limits on SGDs. Among these plans are the largest, by enrollment, in the FEHB program.

Implications for Insurance and Health Plans' SGD Coverage

- ACA provides important new protections for SGD coverage and many advocacy demands.
- ACA will allow challenges to “benefits designs” and “implementation of benefits designs” which generally were not possible under state insurance or civil rights laws.
 - SGD exclusions are an example of “benefits design.” They will now have to be justified on a factual or cost-basis or will be set aside. There is no factual or cost basis for SGD exclusion.
 - SGD exclusions as “comfort or convenience items” will have to be justified. Effective speech is no more a matter of “comfort or convenience” than is breathing.
- Under ACA, insurance policies must offer “equal” scope of coverage to state benchmark plans. Four state benchmark plans exclude SGDs (MN, MT, ND, WY).
 - These will be challenged.
- Under ACA, annual dollar limits on EHBs are prohibited.
 - The FEHBP plans with annual dollar limits are illegal and will be challenged.
- There is an existing challenge, brought by USSAAC, to FEHBP plans with SGD exclusions. It targets the failure of the Office of Personnel Management to negotiate with plan sponsors regarding SGD coverage. This is now pending at the US Court of Appeals in Washington, D.C.
 - A decision is expected by the end of the year or early in 2016.
 - Independent of this action, FEHBP plans with SGD exclusions can be challenged directly under the ACA.



"I'll pause for a moment so you can let this information sink in."

Follow Up Information

- Join USSAAC! <http://www.ussaac.org/memberships.cfm>
- Go to <https://www.isaac-online.org/english/news/upcoming-events/webinars/> for CE information, webinar materials, and the evaluation
- Let us know what you think and ideas for future topics and events
- Thank you!



