



The USSAAC Webinar Series

MEDICAID SGD FUNDING UPDATE: CURRENT DEVELOPMENTS AND ISSUES

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WHAT WILL YOU LEARN?

- The basis for Medicaid funding for SGDs
- Current Medicaid landscape related to SGD coverage
- SLP evaluations
- Managed care organizations that administer Medicaid for some recipients
- Medical need standards
- “Tablet computer” coverage issues arising from natural disasters
- Current SGD coverage and access impediments

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Medicaid: Basic Facts

- Medicaid is the most important health benefits program for children and people with disabilities.
- Medicaid was created in 1965, as part of the same law that created Medicare.
- Its purpose is to “enable each state to furnish rehabilitation and other services to help [aged, blind, or disabled] individuals attain or retain capability for independence or self-care....” Source: 42 USC § 1396-1.
- Medicaid is “optional:” states “elect” to participate. All states *do* so.
- Medicaid is funded jointly by the federal government and the states.
- The states are responsible for day-to-day program administration, but states must follow federal law, rules and guidance.
- All states cover and pay for SGDs; SGDs were established as Medicaid benefits between the late 1970’s and 2000.
- Medicaid SGD coverage extends to recipients of all ages and whether state agency or managed care contractor (MCO) is the decision maker

How Medicaid Works - 1

- **Rules of 4:** Access to Medicaid funding is based on 4 criteria:
 - Eligibility: client seeking care must be a Medicaid recipient
 - Coverage: care being sought must “fit” within the scope of covered Medicaid benefits
 - Medical Need: care being sought must be for a medical purpose (treatment)
 - Special rules: Medicaid programs have some special rules that may affect access to care, e.g., related to age, residence, duty to seek the least costly equally effective alternative (LCEEA)
- Most attention has been directed to SGD “Coverage:”
 - Are SGDs a Medicaid benefit?
 - Do SGDs “fit” within the scope of any covered Medicaid benefits category?

How Medicaid Works - 2

- **Coverage Rule of 4:**

- SGDs must be primarily and customarily used **to serve a medical purpose**;
- SGDs must generally not be useful to an individual in the absence of a disability, illness, or injury (**always recommend “dedicated,” or “locked” devices**);
- SGDs must be able to withstand repeated use (be durable); and
- SGDs must be reusable or removable.

Source: 42 CFR § 440.70(b)(ii)(2016).

- “Coverage” decisions focus on device characteristics not individual client facts. Once coverage is established it should apply to all subsequent requests.
 - All Medicaid programs acknowledged SGD coverage by the end of 2000.

Detour: SGD Coverage By Other Health Benefits Programs

- Coverage also has been the primary focus of SGD advocacy directed to other health benefits programs.
- The SGD characteristics that establish Medicaid coverage also apply to other funding programs. Only meaningful difference: “*appropriate for use in the home*” is common coverage requirement.
- Once SGD coverage is established, it will apply to future benefits requests from the same source AND to other funding sources that apply the same coverage definitions. There is a *duty to interpret words and phrases consistently*.
- *Consistent decision making duty* also applies to diagnoses; types of devices; data demands; medical need interpretations.
- Institutional memory is invaluable: insurance database at www.aacfundinghelp.com.
- SLP and USSAAC institutional memory



Medical Need - 1

- Key to unlock all healthcare benefits. No universal definition.
- What does Medical Need mean?
- Example: Medicaid funding will be provided when requested care is “medically necessary to prevent, diagnose, **correct or cure** a condition of the recipient which causes acute suffering; endangers life; **results in illness or infirmity**; **interferes with normal activity**; or **threatens to cause a significant handicap**.”
Source: 18 NYCRR § 513.1.
- *Necessary to prevent, diagnose, **correct or cure** a condition* means that requested medical, dental and remedial care, services or supplier would: meet the recipient’s medical needs; **reduce the recipient’s physical or mental disability**; **restore the recipient to his or her best possible functional level**; or **improve the recipient’s capacity for normal activity**. Necessity to prevent, diagnose, correct or cure a condition must be determined **in light of the recipient’s specific circumstances and the recipient’s functional capacity to use or make use of the requested care**, services or supplies and appropriate alternatives. Source: 18 NYCRR § 513.1.

Medical Need - 2

- Common Medical Need Elements: **3rd Rule of 4:**
 - An illness, condition or disability
 - a condition of the recipient
 - That causes adverse health effects
 - which causes **acute suffering; endangers life; results in illness or infirmity; interferes with normal activity; or threatens to cause a significant handicap.**
 - A treatment exists for the condition
 - Treatment is defined broadly: **correct or cure a condition;** also, alleviate or ameliorate;
 - **reduce the recipient's physical or mental disability; restore the recipient to his or her best possible functional level; or improve the recipient's capacity for normal activity.**
 - That is the least costly equally effective alternative (LCEEA) that will achieve the treatment goal
 - LCEEA ≠ least costly alternative; cost is considered after options are found to offer equal benefit or effectiveness; then, the least costly of those options must be recommended

SGD Medical Need

- Most states have SGD coverage guidelines identifying specific data required to establish SGD medical need
- Most common procedure:



SGD Medical Need

Key Questions: SLP Evaluation

- SGD Medical Need: SLP evaluation & report questions:
 - *What is the client's current condition?*
 - What are the adverse effects of the current condition? How does the current condition adversely affect the client's ability to meet daily communication needs?
 - *What interventions (SLP treatment options), if any, have been tried or currently are being implemented to treat the condition – to address its adverse effects?*
 - In what ways are the past or current efforts inadequate: what adverse effects remain? How is the client still unable to meet all daily communication needs?
 - **DO NOT report on client needs or intentions not related to face-to-face communication**
 - *What other interventions might yield greater reduction of or eliminate the remaining adverse effects? Among these options, which is the most appropriate to enable the client to meet his or her daily communication needs?*
 - If several interventions will yield about the same benefits, i.e., will be equally effective, which is the least costly equally effective alternative among them?

SGD Medical Need: SGD Trials

- Professional practice: SGD trials are a matter of SLP discretion.

Source: ASHA (1981).

- Medicaid practice: some states require trials; others allow them
- **SGD Trials Purpose: Rule of 4:**
 - Interest: does the client show interest in communicating with the device?
 - Understanding: does the client understand the basic operating requirements of the device?
 - Ability: does the client have the ability to use the device (access)?
 - Benefit: will device use improve the client's communication functioning above current abilities?

Source: ISAAC (2016); USSAAC (2016).

SGD Medical Need

- SGD Evaluation and Trial Report: must address data required by SGD guidelines
- Common SGD guidelines' expected conclusion from evaluation and trial:
 - show client's "ability and willingness to use the SGD effectively;"
 - "ability to learn to use ...";
 - "potential to use...."
- Generally accepted SGD Medical Need standard:
 - Medical need for an SGD exists when the client, due to disability, is unable to meet daily communication needs using natural communication methods, such as speech, writing or sign.

Source: D. Beukelman & P. Mirenda, Augmentative & Alternative Communication 4 (4th Ed.)(Baltimore: Brookes Publ. 2013); D. Beukelman, K. Garrett, & K. Yorkston, Augmentative Communication Strategies 4 (Baltimore: Brookes Publ. 2007); Medicare Local Coverage Decision for Speech Generating Devices (2015).

Excuses, Excuses, Excuses

- Several Medicaid programs have attempted to use “medical need” factors as ways to limit SGD access.
- To date, all these attempts have failed.
- The consistent reason for their failure is that the Medicaid assertions are not consistent with current, generally accepted standards of professional practice.
- All Medicaid programs must adopt standards for covered benefits that are “reasonable.” To be reasonable, standards, criteria and guidelines must be consistent with current, generally accepted standards of professional practice. Source: 42 USC § 1396a(a)(17); *Detsel v. Sullivan*, 895 F.2d 58 (2nd Cir. 1990).

Not Treatment at all

- Treatment related excuses include claims that SGDs do not serve a medical purpose: they are not treatment.
- AAC interventions, including SGD use, has been recognized as within the scope of SLP treatment services since 1981. Source: ASHA.
- The goals of AAC interventions are the same as all SLP treatment: to enable clients to meet daily communication needs.
- As complexity or severity of impairments increase, treatment methods change. This is no different for cardiac impairment, mobility impairment, or speech impairment
- For OT, PT, SLP, respiration: when services to improve natural function are insufficient, assistive devices to aid or substitute are needed. Still treatment

Not the Right Kind of Treatment -1

- Other treatment related excuses include: SGDs are treatment for “*effects*” but not the “*cause*” of impairments
- *So what?* No medical need definition limits “treatment” to “causes” of conditions only.
- Lots of covered treatment addresses “effects” not causes of impairment: e.g., DME; angioplasty and stents; prosthetic limbs
- All children are required to be provided with all care necessary to “correct or ameliorate” their condition. Ameliorate means: to make better or more tolerable, or to lessen the severity of its effects: to reduce the disability associated with a condition. Source: 42 USC § 1396d(r)(5); *Collins v. Hamilton*, 231 F.Supp.2d 840 (S.D. In. 2002), *aff'd* 349 F.3d 371 (7th Cir. 2003); *accord Ekloff v. Rodgers*, 443 F.Supp.2d 1173 (D. Ariz. 2006), *K.G. ex rel Garrido v. Dudek*, 839 F.Supp.2d 1254 (S.D. Fla. 2011); 864 F.Supp.2d 1314 (S.D. Fla. 2013).

Not the Right Kind of Treatment -2

- Other treatment related excuses ignore “all daily communication needs” and substitute: *must be used 100 percent of the time to express pain, hunger or medical symptoms.*
- Commonly called “med-speak.” Focus is on content of speech. Reviewing court declared this “manifestly wrong.”
- “Medical need ... is not merely that need that results from, or is related to the communication of symptoms or complaints of illness, or to the necessary treatment thereof. ... The provision of an [SGD] is intended to correct the inability to speak, and is thus necessary to meet his medical need.” Source: In re: Andrew S. (NY Medicaid 1988)
- “[C]ommunication skills themselves are medical in nature” Source: In re: Melvin D. (NY Medicaid 2005).

Not the Right Kind of Treatment - 3

- Another similar excuse is that SGDs serve *educational rather than medical purposes*.
- If “med-speak” is focused on *what* is stated, this excuse is focused on *where* speech occurs.
- Even if “med-speak” of symptoms, pain and hunger was a proper interpretation of medical need, how are these topics not “medical” even if they arise in school?
- This excuse also was “justified” by *who* conducted the SLP evaluation. Some SGD requests were denied when the SLP was employed by the client’s school. Whether an SLP is in private practice or in another employment setting is immaterial to the ability to identify impairment; need for treatment; and the most appropriate treatment.

Educational Not Medical Need - 1

- Another way medical need and schools are linked inappropriately is a demand for *school concurrence* of an SGD recommendation
- Medicaid cannot block access to care based on what another program does or doesn't do.
- Schools may not speak to SGD need at the time of the Medicaid request and there is nothing clients or Medicaid can do about it in the context of the Medicaid request or appeal process.
- School silence does not mean non-support.
- Schools can *intentionally* not speak because they are waiting for SGD funding by Medicaid to be approved and the device delivered first.
- Schools may not want to speak because of financial responsibility concerns.
- Medicaid cannot claim schools must pay first, or that clients must go through the IDEA appeal process to establish a right to the SGD.

Educational Not Medical Need - 2

- Yet another educational need excuse was that *some* need for the SGD is educational and *some* need is medical, so there should be joint or shared funding for the device
- But there was no basis to allocate shares between the two “needs”
- There was no agreement by the schools in general or the client’s specific school district to share the costs
- Medicaid can’t just carve out its share and put the burden on the client to “get the rest” from the schools
- Medicaid can’t just impose a funding burden on the schools

Medical Need Limits For Specific SGD Types

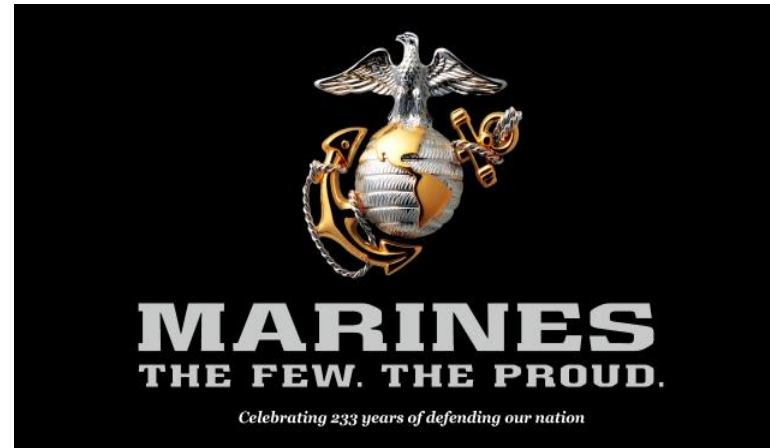
- Another type of medical need limitation is to condition approval of specific types of SGDs – especially E2510 devices – to clients with specific characteristics



- Examples: “advanced language skills;” or “large vocabulary”
- These access pre-requisites fail to account for access issues that affect device choices (Gitlow, 2016): need for VSD; can’t exchange pages on digitized device; vision or access issues affecting cells/page – cannot accommodate client’s vocabulary; need for eye gaze

Medical Need Limits Based on SGD Skills - 1

- Instead of determining eligibility on evidence of “ability and willingness to use the SGD effectively,” Medicaid insists that the client demonstrate specific skills or functional levels as a *pre-requisite for SGD approval*.



- Medicaid has demanded clients show the ability to create novel messages; to navigate pages; to use the device completely independently; that the client demonstrate “proficiency,” “mastery,” “competence,” or be “very good at” SGD use.

Medical Need Limits Based on SGD Skills - 2

- These performance prerequisites are not consistent with professional standards for why a SGD trial is conducted or trial goals (ISAAC (2016); USSAAC (2016)).
- They are not reasonably achievable within the typical duration of a trial.
- They violate the Medicaid statute as it applies to clients younger than 21: states are prohibited from imposing medical need standards more restrictive than “correct or ameliorate.” The standard is based on expected “improvement” not improvement to a specific level of skill or performance.
- They condition eligibility on factors unrelated to SGD need, such as client age, complexity of impairment, learning rate, extent and quality of prior services, and pre-existing skills; and on the intensity of the trial period services
- They are not “necessary” because clients in all states are entitled to ongoing services until they are 21 and in many states, at all ages – what’s the rush?
- If these are general medical need pre-requisites, they will apply to all devices, clients with obvious medical needs will not be approved for any device.

LCEEA -1

- Medicaid may push back against an SGD request (demand more information or deny) claiming the device is not the least costly equally effective alternative – that not all other devices were ruled out.
- Medicaid must be specific; just saying “not enough” is not enough. A request is a conclusion that all data requirements are met. If Medicaid says more is needed, it has to say what is missing or there is no effective way to respond.
- Ruling out alternatives: Non-voice output tools: few clients will be able to meet all daily communication needs without a voice; focus on partners and environments – will pointing to a board or book be effective? Eye gaze boards: *who* is responsible to hold the boards? Not an effective alternative unless this is addressed
- Switches: for indirect selection and digitized devices: will client have access to all vocabulary? No device is appropriate if it does not provide access to all vocabulary. Total messages is not the key: be alert to # cells per page x pages.
- Switches for “direct selection:” only applies to digitized devices. Be alert to vocabulary limits with this technique. May not be any appropriate device switches can attach to.
- Digitized devices as a class: can client use device independently: exchange pages? Can client access all of client’s vocabulary? If not rule out as a category. If client needs eye gaze: rule out as a category.
- Devices no longer made or sold: to be considered device must be “available.”

LCEEA -2

- If Medicaid *is* specific regarding an alternative, SLPs must explain why the devices are not equally effective or not less costly.
- This basis for denial already arises, particularly with Medicaid managed care organizations. They deny requests by claiming devices from “network” providers can meet clients’ needs. This rationale is flawed because it focuses on a “coverage” point: “networks” are an insurance, not Medicaid principle. MCOs are not permitted to restrict the scope of coverage beyond what the state agency covers. SLPs should show the requested device and supplier are accepted by the state agency based on past or current practice. Source: 42 CFR § 438.210.
- If the same decision is based on LCEEA, a specific response will be required. The hardware and software features and performance support from their suppliers all will have to be compared. Differences relevant to the specific client show the devices are not equally effective. As to cost, MCO should be required to state payment rate and give suppliers the opportunity to accept it.

Medicaid SGD Access and Natural Disasters - 1

- In 2017 natural disasters – fires and storms – struck California, Puerto Rico, Texas and the U.S. Virgin Islands. In California and Texas, damage and dislocation was specific to communities; on Puerto Rico and the Virgin Islands, the damage and dislocation was island-wide.
- All of these locations have Medicaid programs; all cover the Medicaid benefits categories that support SGD coverage.
- In all of these locations, some Medicaid recipients experienced loss or damage to their SGDs.
- Recipients from California and Texas should follow the ordinary processes for access to device repair and replacement. This may require an assessment of damage by the SGD manufacturer or supplier; some form of proof of loss; an evaluation and report establishing ongoing medical need; and a new prescription. For a time, many of these requirements were waived by CMS, but those exceptions have expired.

Medicaid SGD Access and Natural Disasters - 2

- Recipients from Puerto Rico and the Virgin Islands who experienced Hurricane Maria related damage or loss to their SGDs (or other DME or prosthetic devices) are still subject to a CMS waiver that extends to mid-March 2018. It states:
 - *Durable Medical Equipment*
 - *As a result of Hurricane Maria, CMS has determined it is appropriate to issue a blanket waiver to suppliers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) where DMEPOS is lost, destroyed, irreparably damaged, or otherwise rendered unusable. Under this waiver, the face-to-face requirement, a new physician's order, and new medical necessity documentation are not required for replacement. Suppliers must still include a narrative description on the claim explaining the reason why the equipment must be replaced and are reminded to maintain documentation indicating that the DMEPOS was lost, destroyed, irreparably damaged or otherwise rendered unusable as a result of these hurricanes.*
 - <https://www.cms.gov/About-CMS/Agency-Information/Emergency/Hurricanes.html>
- Unresolved by this waiver is the ability of recipients relocated off the islands to establish communication with suppliers in order to take advantage of these opportunities. Also, unresolved is the ability of suppliers and the programs themselves to process requests for help.




Supporting people who use AAC and their families

<https://harveyaac.recoverys.org/>

<https://aacdisasterrelief.recoverys.org/>

AAC Relief: Hurricane Harvey Community Admin



Children and adults with severe speech/language disabilities often use Augmentative and Alternative communication (AAC). Join this national effort to support individuals/family members/other AAC stakeholders directly impacted by Hurricane Harvey.

I Have A Need
Get assistance: connect with the goods and services you need.

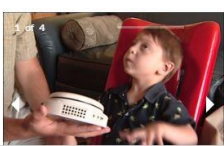
I Want to Give
Send supplies: connect with people who need them.

I Want to Volunteer
Lend a hand: connect with people who need your help.

Locate or suggest donation centers, shelters, and other recovery resources:
[Find Resources »](#)

Emergency Information Post Updates

Emergency: 911 Edit Info Documents



Community Updates Post Updates

To obtain information about how to obtain food, shelter, clothing, mental health counseling, etc. Edit


posted 1 day ago by CERV from [Community Emergency Response Volunteers of the Monterey Peninsula](#)
No comments yet • Labels: 2-1-1

People can call the centers 24/7 and receive information on how to obtain many resources including food, shelter, clothing, mental health counseling, etc. United Way of Texas 2-1-1 call centers.

[Twitter](#) [Facebook](#) [+](#)

Durable Medical Equipment Distribution in Houston Saturday Sept 9 Edit

AAC Disaster Relief Community Admin



This site supports individuals who use AAC so they can re-establish their communication. The United States Society for Augmentative Communication (USSAAC) manages the site and is currently focused on the aftermath of hurricane IRMA.

I Have A Need
Get assistance: connect with the goods and services you need.

I Want to Give
Send supplies: connect with people who need them.

I Want to Volunteer
Lend a hand: connect with people who need your help.

Locate or suggest donation centers, shelters, and other recovery resources:
[Find Resources »](#)

Emergency Information Post Updates

Emergency: 911 Edit Info Post Documents

Community Updates Post Updates

Welcome to AAC Disaster Relief for Hurricane Irma Edit


posted 1 day ago by CERV from [Community Emergency Response Volunteers of the Monterey Peninsula](#)
No comments yet • Labels: hurricane irma aac ussaac communication needs

This site assists people with severe speech and language disabilities who use augmentative and alternative communication (AAC) to enable them to communicate. We are focusing on the aftermath of Hurricane Irma. Help us get the word out!

Individuals who use AAC and their family members can request help or sign...
[Read More](#)

[Twitter](#) [Facebook](#) [+](#)

New Site added to address needs of people who use AAC and their family members impacted by Hurricane Irma Edit



[Update Slideshow](#)

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The banner features a light blue background with a white hand pointing towards a globe icon on the left. The globe shows Australia with a green map overlay. A red speech bubble on the right contains the 'isaac' logo and the organization's full name.



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**REGISTRATION
IS NOW OPEN**

AACcess All Areas
ISAAC 2018
GOLD COAST
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The banner features an aerial view of a coastal town and beach. The 'isaac' logo is in the top right. Large yellow and white text reads 'REGISTRATION IS NOW OPEN'. A globe icon with the event details is in the bottom right.