

Looking to Medicaid to Fund Cutting Edge and Specialty Equipment

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October 23, 2013

Today's Co-Sponsors

National Assistive Technology (AT) Advocacy Project

Neighborhood Legal Services, Buffalo, New York

The Advocacy Center

New Orleans, La.

(sponsoring continuing legal education credits)

National AT Advocacy Project Services

- Technical assistance
- Training
- Written materials (newsletters, longer articles, “Did You Know” series)
- Resource library (hearing decisions, court briefs)
- List service

All services geared to help obtain funding for AT.

Logistics for Training

- Will go for 90 minutes (1.5 CLE credits)
- Seeking CLE, Certificate of Attendance (CEUs)
 - Must complete evaluation form
 - Secret phrase given twice during presentation
- Questions
 - By email only to Lynn (lurquhart@nls.org)
 - At least 2 Q&A segments
 - After session, send questions to Diana (dstraube@nls.org) or Jim (jsheldon@nls.org)

Medicaid: Joint Federal - State Program

- Purpose – enable states to help meet the costs of necessary medical services to attain or retain capability for independence or self-care.
- Participating states must comply with federal Medicaid law.

Mandatory & Optional Services

- Services participating states must provide include:
 - Inpatient hospital services
 - Outpatient hospital services
 - Other laboratory and X-ray services
 - Nursing facility services
 - Physician services
 - Home health services (includes medical equipment)

Optional Services

- States may elect to provide other services, including:
 - Private duty nursing, personal care services
 - Clinic services
 - Dental services
 - Physical therapy and related services
 - Hospice services
 - Prosthetics, orthotics

Determining Medicaid Coverage

- Is the individual eligible for Medicaid?
- Does the item meet criteria under any service category in state plan?
- Is the item medically necessary?

Home Health Services

- Service category that includes equipment (durable medical equipment or DME)
- State plan must include home health services (42 CFR 440.210)

AT may be included in other service categories:

- OT, PT services
- Prosthetics and orthotics
- Rehabilitation

DME

- Not defined in federal law (may change soon)
- Some states use Medicare definition
 - Can withstand repeated use: expected life of at least 3 years if item is classified as DME after Jan 1, 2012;
 - Primarily and customarily used to serve a medical purpose;
 - Generally is not useful to an individual in the absence of an illness or injury;
 - Appropriate for use in the home.

Limits on Coverage

- Utilization control procedures (prior approval or prior authorization)
- Medical necessity, as defined by each state
- Least costly, equally medically effective alternative

EPSDT

- Early
- Periodic
- Screening
- Diagnosis
- Treatment (to correct or ameliorate)
- All Medicaid recipients under age 21
- All services mandatory

Standing Wheelchairs

- Does it meet definition of DME and/or other service categories?
- What medical needs does standing meet?
- Can person use less costly separate standers?
 - Any risks involved with transfers?
 - Any benefits not available with separate stander?

Precedent for Funding

- *Johnson v. Minnesota Dept. of Human Services*, 565 NW2d 453 (Minn. 1997)
- *Sorrentino v. Novello*, 295 AD2d 592 (NY 4th Dept. 2002)
- *Correa v. NC Dept of HHS*, No. 09-CVS-18112 (NC 2010), available from the National Assistive Technology Advocacy Project.
- *Koenning v. Janek*, 897 F Supp 2d 528 (S.D. Texas, 2012), vacated on other grounds, 2013 WL 4430365 (5th Cir. 2013)
- Numerous administrative hearing decisions

Adaptive Tricycles

- Does it meet the definition of DME or other service categories?
- Does it meet medical needs? What about use in winter?
- Can Medicaid deny coverage because it is exercise equipment? (CMS policy letters)
- Should a Medicaid waiver program pay instead?

Functional Electrical Stimulation (FES) Leg Cycles

- Issues:
 - Is it experimental?
 - Are there documented medical benefits?
 - Are there less costly alternatives?
 - Is there a less costly combination of therapies?
 - Is it safe for home use?

Medical Benefits of FES

- Improved cardiovascular function;
- Improved blood flow;
- Improved bone density;
- Decreased spasticity;
- Increased muscle mass;
- Improved glucose tolerance and insulin sensitivity (for the prevention of Type II Diabetes).

Exercise Equipment

- Is item DME or some other service category?
- Does exercise meet a medical need?
- CMS policy letter (“DeSario Letter”):
 - States cannot categorically exclude items that otherwise fit definition of DME
 - Must have evolving list for new technologies
 - Referenced by Supreme Court in *Slekis v Thomas*, 525 U.S. 1098 (1999)

Therapeutic Exercise Equipment

Exercise equipment funded includes:

- Reck Motomed
- Uppertone Exercise Unit
- Flex Leg Therapy Machine

Contact National AT Advocacy Project for winning fair hearing decisions.

Environmental Control Units

- Issues:
 - Is it DME? Fit another coverage category?
 - How is it medically necessary?
 - Are there other funding sources?

Ceiling Track Lifts

- Issues:
 - Is it a home modification?
 - If home modification, can it also be DME?
 - Are there less costly alternatives?
 - May 21, 2013, letter from CMS to Texas Medicaid – ceiling track lifts are reimbursed by CMS if they meet state's definition of DME

Ramps

- Issues:
 - Is a ramp a home modification?
 - Does it make a difference if the ramp is portable rather than permanent?
 - Is it useful in the absence of an illness or injury ?

iPad as Speech Generating Device

- Issues:
 - Probably not DME (Not primarily medical, useful in absence of illness or injury)
 - Coverable as prosthetic or speech/language service (which includes equipment)?
 - Should it matter that it is not a “dedicated” device?
 - Other possible funding sources?

Home and Community Based Services (HCBS) Waiver

- Allows states to waive certain federal requirements
 - Statewideness
 - Comparability
 - Income and resources (of responsible relative)

HCBS Waivers continued

- Purpose: to allow individuals to receive Medicaid services in the community
- If waiver covers AT, it usually covers AT not available under the state Medicaid plan.
- Waiver may require individual seek other funding, including traditional Medicaid, first.

HCBS Waivers continued

- Can cover wide range of services, such as:
 - Environmental modifications (home and vehicle)
 - Personal care services
 - Transportation
 - Respite

Consumer Rights

- The right to request funding for a particular device
- The right to a written determination, including detailed reasons for the determination and the regulations that support it
- Right to challenge determination at a hearing

Administrative Hearings

- Recipients may:
 - Examine case file and all documents agency intends to use at hearing
 - Present evidence, witnesses
 - Confront and cross-examine adverse witnesses
 - Establish all pertinent facts
 - Present argument without undue influence