

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

DANIELLE BROWN, et. al. 1998 DEC 15 P 3:09

Plaintiffs THOMAS C. CAVER, CLK
U. S. DISTRICT COURT
MIDDLE DISTRICT ALA

vs.

Case No. 98-T-663-N

GOVERNOR FOB JAMES, JR., et. al.

Defendants.

SETTLEMENT AGREEMENT

WHEREAS on June 11, 1998, Plaintiffs filed suit on the issue of Alabama Medicaid's provision of augmentative communication devices (ACDs); and

WHEREAS Alabama Medicaid has adopted certain criteria for the provision of ACDs;

NOW THEREFORE the parties, by and through their respective counsel, hereby stipulate and agree to the following provisions to resolve this litigation:

1. For the purpose of settlement only, Defendants do not object to class certification. The settlement class is defined as "all Alabama Medicaid recipients with severe expressive communication impairments who need, or may in the future need, augmentative and alternative communication devices."

2. Alabama Medicaid will provide coverage for augmentative communication devices for both children and adults through the Medicaid Durable Medical Equipment Program.

3. The policy for processing applications for ACDs, attached hereto as Exhibit A, will be made part of the Alabama Medicaid Supplies, Appliances, and Durable Medical Equipment (DME) Provider Manual, effective immediately.

4. The ACD policy (Exhibit A) will be made part of the Alabama Medicaid Agency Administrative Code, Chapter 13. Submission to the Legislative Reference Service will be made to meet the January 1999 deadline for publication in the Alabama Administrative Monthly. Once adopted, any amendments to the policy will be subject to the notice and other requirements of the Alabama Administrative Procedures Act, Ala. Code § 41-22-1, et seq.

5. All present DME providers, as well as the Speech and Hearing Association of Alabama, will be mailed a copy of the ACD policy (Exhibit A) with an appropriate cover memo explaining in plain language that ACDs are covered as durable medical equipment by Alabama Medicaid. This memo will include the name and phone number of a contact person to whom inquiries may be addressed. A copy of the memo will also be provided to Plaintiffs' counsel.

6. In the January 1999 EDS Bulletin, Alabama Medicaid will publish a notice announcing that ACDs are covered as durable medical equipment by Alabama Medicaid. This notice will include the name and phone number of a contact person to whom inquiries may be addressed.

7. All Medicaid recipients who apply for ACDs will be provided an opportunity for a fair hearing if their request is denied and will have access to all remedies presently afforded under the Alabama Administrative Procedure Act.

8. On March 1, June 1, September 1, and December 1, 1999, Alabama Medicaid will provide Plaintiffs' counsel a list of all applications for ACD funding that have been denied, including the details of each such application and the basis for the denial. Medicaid may redact the names of the applicants for the purpose of preserving confidentiality.

9. Statistical information regarding the number of applications for ACDs, as well, as the number of approvals and denials, will be available at the Medicaid office as public record information.

10. The parties agree to request that the Court place this matter in civil suspense status until January 1, 2000. This litigation may be reactivated upon a motion by either party alleging the opposing party's noncompliance with the terms of this Settlement Agreement. If neither party moves to reactivate this matter before January 1, 2000, the parties will submit a joint request to the Court to dismiss the litigation without prejudice pursuant to Federal Rule of Civil Procedure 41 (a).

11. Attorneys' fees will be negotiated and resolved, or submitted to the Court, on or before February 1, 1999.

12. By entering into this settlement, Defendants do not admit to any liability in this case.

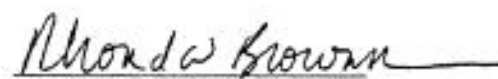
13. This agreement constitutes the full and final settlement of issues related to this case.

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For Plaintiffs ADAP, Brown, and
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Date:

12-15-98

ALABAMA MEDICAID AGENCY

AUGMENTATIVE COMMUNICATION DEVICES

Effective Date – 07/01/98
HCPCS Code R-E1399ZN
P-E1399ZN

Coverage is provided for Augmentative Communication Devices (ACD) for eligible individuals who meet criteria set out herein. Prior authorization for the ACD service is required. Requests for prior authorization must be made on the Medicaid Prior Authorization Form 136. The request must be accompanied by appropriate medical and other required documentation.

DESCRIPTION

Augmentative Communication Devices are defined as portable electronic or non-electronic aids, devices, or systems determined to be necessary to assist a Medicaid eligible recipient to overcome or ameliorate severe expressive speech-language impairments/limitations due to medical conditions in which speech is not expected to be restored, and which enable the recipient to communicate effectively. These impairments include but are not limited to: apraxia of speech, dysarthria, and cognitive communication disabilities. These devices are reusable equipment items which must be reasonable, a necessary part of the treatment plan consistent with the diagnosis, condition or injury, and not furnished for the convenience of the recipient or his family. ACD components and/or accessories prescribed or intended primarily for vocational, social, or academic development/enhancement and which are not necessary as described hereinabove will not be provided.

Scope of Services includes the following elements:

- Screening and evaluation
- ACD, subject to limitations
- Training on use of equipment

CANDIDACY CRITERIA

Candidates must meet the following criteria:

Under age 21:

1. EPSDT referral by Medicaid enrolled EPSDT provider. Referral must be within one year of application for ACD; (the EPSDT provider must obtain a referral from the Patient First Primary Care Provider where applicable); and
2. Medical condition which impairs ability to communicate as described herein; and
3. Evaluation by required qualified, experienced professional; and
4. Physician prescription to be obtained after the evaluation and based on documentation contained in evaluation.

Adults, age 21+:

1. Referral from a primary care physician (Patient First PCP/PMP where applicable). Referral must be within one year of application for ACD ; and
2. Medical condition which impairs ability to communicate as described herein; and
3. Evaluation by required qualified experienced professionals; and
4. Physician prescription to be obtained after the evaluation and based on documentation provided in the evaluation.

INTERDISCIPLINARY PROFESSIONALS

The candidate must be evaluated by qualified interdisciplinary professionals.

Interdisciplinary professionals must include the following:

1. Speech-Language Pathologist
 - * Master's degree from accredited institution
 - * Certificate of Clinical Competence in Speech/Language Pathology from the American Speech, Language, Hearing Association
 - * Alabama license in Speech/language Pathology
 - * No financial or other affiliation with a vendor, manufacture or manufacturer's representative of ACDs

* Current continuing education

2. Physician – See Prior Authorization process for requirements

Interdisciplinary professionals should include the following:

1. Physical Therapist
 - * Bachelor's degree in Physical Therapy from accredited institution
 - * Alabama license in Physical Therapy
 - * No financial or other affiliation with a vendor, manufacturer or manufacturer's representative of ACDs
2. Social Worker
 - * Bachelor's degree from accredited institution
 - * Alabama license in Social Work
 - * No financial or other affiliation with a vendor, manufacturer or manufacturer's representative of ACDs
3. Occupational Therapist
 - * Bachelor's degree in Occupational Therapy from accredited institution
 - * Alabama license in Occupational Therapy
 - * No financial or other affiliation with a vendor, manufacturer or manufacturer's representative of ACDs

PRIOR AUTHORIZATION PROCESS

ACDs and services are only available through the Alabama Medicaid prior approval process. Requests for authorization must be submitted to Medicaid for review. Documentation must support that the client is mentally, physically and emotionally capable of operating/using an ACD. The request must include the following documentation:

1. **Medical Evaluation by Physician**
 - a. Medical examination by physician to assess the need for an ACD to replace or support the recipient's capacity to communicate.
 - b. Status of respiration, hearing, vision, head control, trunk stability, arm movement, ambulation, seating/positioning and/or ability to access the device.
 - c. Must have been conducted within 90 days of request for ACD.

1. **Recipient Information**
 - a. **Identifying Information**
 - * Name
 - * Medical Assistance Number
 - * Date(s) of Assessment
 - * Medical diagnosis (primary, secondary, tertiary)
 - * Relevant medical History
 - b. **Sensory Status: By physician**
 - * Vision
 - * Hearing
 - * Description of how vision, hearing, tactile and/or receptive communication impairments affect expressive communication (e.g., sensory integration, visual discrimination)
 - c. **Postural, Mobility & Motor Status:**
 - * Motor status
 - * Optimal positioning
 - * Integration of mobility with ACD
 - * Recipient's access methods (and options) for ACD
 - d. **Developmental Status:**
 - * Information on the recipient's intellectual/cognitive/developmental status
 - * Determination of learning style (e.g., behavior, activity level)
 - e. **Family/Care-giver and Community Support Systems**
 - * A detailed description identifying caregivers, and support; the extent of their participation in assisting the recipient with use of the ACD, their understanding of the use and their expectations
 - f. **Current Speech, Language and Expressive Communication Status**
 - * Identification and description of the recipient's expressive or receptive (language comprehension) communication impairment diagnosis
 - * Speech skills and prognosis
 - * Communication behaviors and interaction skills (i.e., styles and patterns)
 - * Description of current communication strategies, including use of an ACD, if any
 - * Previous treatment of communication problems

- g. Communication Needs Inventory
- * Description of recipient's current and projected (e.g., within 5 years) speech-language needs
 - * Communication partners and tasks, including partners' communication abilities and limitations, if any
 - * Communication environments and constraints which affect ACD selection and/or features
- h. Summary of Recipient Limitations
- * Description of the communication limitations
- i. ACD Assessment Components
- * Justification for and use to be made of each component and accessory requested
- j. Identification of the ACDs Considered for Recipient – Must Include at Least Two (2):
- * Identification of the significant characteristics and features of the ACDs considered for the recipient
 - * Identification of the cost of the ACDs considered for the recipient (including all required components, accessories, peripherals, and supplies, as appropriate)
 - * Identification of manufacturer
 - * Justification stating why a device is the least costly, equally effective alternative form of treatment for recipient
 - * Medical justification of device preference, if any
- k. Treatment Plan & Follow Up
- * Description of short term and long term therapy goals
 - * Assessment criteria to measure the recipient's progress toward achieving short and long term communication goals
 - * Expected outcomes and description of how device will contribute to these outcomes
 - * Training plan to maximize use of ACD
- l. Documentation on recipient's trial use of equipment including amount of time, location, analysis of ability to use.
- m. Documentation of qualifications of speech language pathologists and other professionals submitting portions of evaluation. Physicians exempt from this requirement.
- n. Signed statement that submitting professionals have no financial or other affiliation with manufacturer, vendor, or sales

representative of ACDs. One statement signed by all professionals will suffice.

MEDICAID RESERVES THE RIGHT TO REQUEST ADDITIONAL INFORMATION AND/OR EVALUATIONS BY APPROPRIATE PROFESSIONALS.

LIMITS

ACDs are subject to the following limitations:

ACDs including components and accessories will be modified or replaced only under the following circumstances:

1. Medical change: Upon the request of recipient if a significant medical change occurs in the recipient's condition which significantly alters the effectiveness of the device.
2. Age of Equipment: ACDs outside the manufacturer's or other applicable warranty which do not operate to capacity will be repaired. At such time as repair is no longer cost effective, upon request by recipient, replacement of identical or comparable component or components will be made. Full documentation of the history of the service, maintenance, and repair of the device must accompany such request.
3. Technological Advances: No replacements or modifications will be approved based on technological advances unless the new technology would meet a significant medical need of the recipient which is currently unmet by present device.

All requests for replacement, modification as outlined in 1 – 3 above require a new evaluation and complete documentation. If new equipment is approved, old equipment must be turned in.

Invoice: Manufacturers' invoice must be forwarded to the Medicaid Prior Authorization unit at the time claim is filed.

Trial Period: No communication components will be approved unless the client has used the equipment and demonstrated an ability to use the equipment. Prior authorization for rental may be obtained for a trial period. This demonstrated ability can be documented through periodic use of sample/demonstration equipment. Adequate supporting documentation must accompany the request.

Repair: Repairs are covered only to the extent not covered by manufacturers' warranty. Repairs must be prior approved. Battery replacement is not considered repair and does not require prior authorization.

Loss/Damage: Replacement of identical components due to loss or damage must be prior approved. These requests will be considered only if the loss or damage are not the result of misuse, neglect, or malicious acts by the users.

Component/Accessory Limits: No components or accessories will be approved which are not medically required. Examples of non-covered items include but are not limited to: printers, modems, service contracts, office/business software, software intended for academic purposes, workstations, any accessory that is not medically required.

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