Decision 13-12-054 December 19, 2013

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Add Speech Generating Devices to the Deaf and Disabled Telecommunications Program.	Rulemaking 13-03-008 (Filed March 21, 2013)

DECISION MODIFYING THE DEAF AND DISABLED TELECOMMUNICATIONS PROGRAM TO ADOPT RULES, REGULATIONS, AND PROCEDURES REGARDING SPEECH GENERATING DEVICES

Table of Contents

Title	Page
1. Summary	2
2. Background	2
2.1. Deaf and Disabled Telecommunications Program	2
2.2. Assembly Bill 136	4
2.3. Procedural Matters	4
3. Comments on Rulemaking and Working Group Report	6
3.1. DRA	7
3.2. CforAT	7
3.3. ATLC	12
3.4. SCT	13
3.5. Coggiola	14
4. Comments on Draft Rules	14
4.1.1. DRA	14
4.1.2. CforAT	17
4.1.3. Coggiola	22
4.1.4. ATLC	23
4.2. Discussion	31
4.2.1. Rules Pursuant to Pub. Util. Code § 2881(d)	32
4.2.1.1. Conclusion Regarding Rules Pursuant to Pub. Util. Code § 2881(d)	36
4.2.2. Supplemental Telecommunications Equipment Rules	38
4.2.2.1. Conclusion Regarding Supplemental Telecommunications Equipment Rules	39
4.2.3. Other	40
5. Assignment of Proceeding	40
6. Comments on Proposed Decision	40
Findings of Fact	41
Conclusions of Law	45
ORDER	48

Attachment A – Speech Generating Device Rule
Attachment B – Supplemental Telecommunications Equipment Rules
Attachment C – Draft Speech Generating Device Rule

DECISION MODIFYING THE DEAF AND DISABLED TELECOMMUNICATIONS PROGRAM TO ADOPT RULES, REGULATIONS, AND PROCEDURES REGARDING SPEECH GENERATING DEVICES

1. Summary

By today's decision, we authorize the modification of the Deaf and Disabled Telecommunications Program in order to implement the provisions of Assembly Bill (AB) 136 (Ch.404, Stats. 2011). In particular, we authorize the addition of rules, guidelines and procedures to govern the access to and distribution of Speech Generating Devices to any subscriber who is certified as having a speech disability requiring this device (see Attachment A). We also authorize the addition of rules to govern the access to and distribution of other assistive devices not addressed in AB 136. A second phase of this proceeding will address: 1) whether further guidance is required in the administration of the distribution programs adopted herein; 2) whether exemptions or expedited procedures should be added to the rules adopted herein when there is a specific need; and 3)assessment of the sufficiency of funding.

2. Background

2.1. Deaf and Disabled Telecommunications Program

The Deaf and Disabled Telecommunications Program (DDTP) offers assistive telecommunications services and equipment to California residents who are certified as having a hearing, speech, mobility, vision, or cognitive disability. The Commission established a program to provide specialized equipment to persons who are deaf and hard of hearing through Commission decisions issued during the 1980's. Subsequently, the Legislature codified the program through

enactment of several provisions in Public Utilities Code § 2881 et seq.[1] To implement these legislative mandates, the Commission created the DDTP and its advisory committees. The legislative mandates governing the DDTP currently include:

1. Section 2881(a), which authorizes the provision of Teletypewriters (TTYs) to deaf or hard-of-hearing individuals;
2. Section 2881(b), which uses third-party intervention, also known as the California Relay Service (CRS), to connect telephone consumers who are deaf, hard-of-hearing, or speech-impaired with other parties; and
3. Section 2881(c), which authorizes the provision of other specialized telecommunications equipment to consumers with hearing, vision, mobility, speech, or cognitive disabilities.

The DDTP is funded via a surcharge assessed on revenues collected from end-users for all intrastate telecommunications services in California. Pursuant to Senate Bill (SB) 669 (1999) and Assembly Bill (AB) 1734 (2002), the DDTP Committee Fund, was created to hold these surcharge funds. The current DDTP surcharge rate is 0.20%, is designated as the "California Relay Service and Communications Devices Fund," and is capped at 0.50%.

Prior to enactment of AB 136, § 2881(d) required that the DDTP provide specialized telecommunications equipment such as amplified phones, speakerphones, and TTYs to consumers with hearing, vision, mobility, speech or cognitive disabilities. This equipment is provided through the DDTP's California

[1] All statutory references are to the Public Utilities Code, unless otherwise noted. References are identified as either Pub. Util. Code § or simply §.

Telephone Access Program (CTAP). A dual-party relay system, now called the CRS, connects TTY users with any other telephone user.

2.2. Assembly Bill 136

On October 2, 2011, Governor Edmund G. Brown, Jr. signed into law AB 136,[2] which amended § 2881, as it relates to telecommunications equipment. Per AB 136, the Commission must adopt rules to implement the Speech Generating Devices (SGD) program by January 1, 2014. As amended, § 2881 modifies the DDTP as follows:

a. Adds Speech Language Pathologists (SLP) to the list of agents that can certify individuals as being eligible to receive equipment from the DDTP;
b. Expands the DDTP to individuals with speech disabilities for the provision of SGD, accessories, mounting systems, and specialized telecommunications equipment; and
c. Expands the list of equipment provided by the DDTP to include SGDs which, due to their medical nature, were previously outside the scope of telecommunications equipment the DDTP has provided to eligible individuals.

2.3. Procedural Matters

Order Instituting Rulemaking (OIR or R.) 13-03-008 was issued on March 26, 2013 in order to address the implementation of AB 136. Prior to its issuance, the Commission held two forums in Northern and Southern California to receive comments from interested participants regarding SGD distribution. These forums included panelists representing SGD users, SLPs and the SGD manufacturer/providers. During these forums, the Commission sought input

[2] Beall, Statutes 2011, Chapter 404, effective January 1, 2012.

from all attendees about how the DDTP's SGD distribution program should be developed. All of the manufacturers present urged the Commission to work with all entities involved (SGD users, manufacturers and SLPs) to develop program rules. Many of the participants at both forums expressed reluctance to participate in a formal Commission proceeding because of the time and expense.

Parties to this OIR include: Lewis Golinker for the Assistive Technology Law Center (ATLC), Hien Vo Winter for the Division of Ratepayer Advocates (DRA), Jesus G. Roman for Verizon California Inc. (Verizon), Jennifer Coggiola – a SLP with the University of California at San Francisco (Coggiola) - Amyotrophic Lateral Sclerosis (ALS) Center, Melissa Kasnitz for the Center for Accessible Technology (CforAT), and Dr. Bob Segalman, Ph.D., D.Sc. for Speech Communications by Telephone, Inc. (SCT).

In response to the questions posed in the OIR, opening comments were filed on April 25, 2013 by DRA and CforAT. Reply Comments were filed on May 10, 2013, by CforAT.

On June 14, 2013 and July 19, 2013, respectively, the assigned Administrative Law Judge (ALJ) ruled that CforAT and ATLC are eligible to file a claim for intervenor compensation in this proceeding.

Pursuant to R.13-03-008, the assigned ALJ issued a ruling on April 24, 2013 to initiate a volunteer working group that would provide recommendations to the Commission for developing SGD distribution program rules. The working group included SGD users, SLPs and others who perform SGD assessments, and SGD manufacturers and distributors, government entities, and other organizations including non-profit organizations. On June 4, 2013 and July 2, 2013, working group Status Reports #1 and #2 respectively were provided to the assigned ALJ. After meetings were held during May and June, a final Working

Group Report was issued on July 31, 2013. The assigned ALJ accepted the final Working Group Report (Final Report) and its Attachments 1 and 2 through an electronic mail (e-mail) ruling on August 23, 2013. On August 8, 2013, CforAT filed comments to the final Working Group Report.

On June 14, 2013, the assigned ALJ issued an electronic ruling requesting comments on a draft set of rules for governance of the SGD Distribution Program. Opening comments were filed by DRA, Coggiola, CforAT, and ATLC on July 8, 2013; and Reply comments were filed by DRA, CforAT, and ATLC on July 19, 2013.

All rulings issued by the assigned Commissioner and ALJ are affirmed herein; and all motions not specifically addressed herein or previously addressed by the assigned Commissioner or ALJ are denied.

Throughout this decision, the Commission refers to SGDs addressed by the Speech Generating Device Rules as either the United States Health and Human Services (HHS)-defined SGDs or Durable Medical Equipment (DME) SGDs.[3] SGDs addressed by the Supplemental Telecommunications Equipment Rules are referred to as non-DME SGDs, assistive devices, or supplemental telecommunications equipment.

3. Comments on Rulemaking and Working Group Report

In additions to comments on the Draft Rules, parties provided comments to the rulemaking, contributions to the working group Status Reports and Final Report, and comments to the Final Report.

[3] http://cms.hhs.gov/medicare-coverage-database/details/ncd-details.aspx?NCDId=274&ncdver=1&bc=AgAAQAAAAAAAAA%3D%3D&

We briefly summarize the contributions made by the parties to the rulemaking and by the members of the working group to the Status and Final Reports.

3.1. DRA

In its Opening Comments to the rulemaking, DRA proposes that the Commission should: 1) consider using the DDTP Equipment Program Advisory Committee to identify eligible SGDs; 2) not prohibit the DDTP from funding SGD costs associated with assessment, installation, training, ongoing monitoring, additional training or equipment repair; 3) not provide payments for SGD equipment directly to individuals; 4) should allow for further discussion of the criteria for obtaining SGD equipment at a public working group; 5) require SGD applicants to document other funding sources; and 6) adopt a phased-in approach regarding the development of rules to govern SGD distribution.

3.2. CforAT

In its Opening and Reply Comments to the rulemaking, CforAT supports the goals of this proceeding, and asks that the rules developed by the Commission do not create additional barriers to participation and burdens on the Californians who need SGDs to communicate and have historically been under-served by the DDTP. CforAT posits that such barriers and burdens arise from participants being low-income, uninsured or under-insured, and struggling with many facets of day-to-day life. Specifically, CforAT raises several specific issues:

1. Type and Cost of SGD
    a. CforAT posits tablet computers (off the shelf) with low to no cost applications could provide the same communication assistance as what is considered a traditional SGD; and that these tablets cost much less than the traditional SGD;

b. § 2881(e) specifically refers to devices that are classified as "durable medical equipment under guidelines established by the United States Department of Health and Human Services." To the extent that certain SGDs, such as tablet computers or smart phones, are off-the-shelf consumer devices, they may not be subject to these statutory requirements:

   i. While these devices may not be covered by public or private insurance, they may still be significantly cheaper than specialized medical devices.

   ii. In addition, they are easier to use, more flexible and more readily available, making them an appropriate solution for addressing the needs of people with speech disabilities.

c. Nothing in Pub. Util. Code §2881(d) authorizing creation of the program at issue in this proceeding limits the program to devices that are classified as durable medical equipment; rather, that term is only used with regard to the subsection addressing insurance funding. As with other provisions regarding funding, this section should be limited to those consumers seeking SGDs that are classified as durable medical equipment. Off-the-shelf consumer devices used as SGDs should not be subject to any such mechanisms.

d. Those customers who have the ability to purchase a device directly should be allowed to do so, and then seek reimbursement through the DDTP program (which could be capped to ensure that consumers do not pay more than a standard market rate for such devices). For the many consumers who may not have the funds available to purchase a device on their own and then wait for reimbursement, the program should establish a system with market vendors (for example, with Apple in order to allow for purchase of iPads) to allow payments to be made directly to

the entity that provides the device, with the device then delivered to the customer.

e. By designing a lending program, in which the ownership of equipment never passes to the consumer, the existing program avoids the issue of tax liabilities. This prevents any financial implications from acting as barriers to participation, increasing the true accessibility of the existing program.

f. For people with communications disabilities, it is particularly important to avoid creating a process that risks disrupting the availability of other necessary benefits.

2. Certification

a. CforAT supports broad approval of appropriate certifying agencies, because the Commission should be looking to minimize the burden on eligible consumers.

b. One way to do this is to accept certification from a broad range of professionals who are likely to have an existing relationship with a person who has a communications disability.

c. CforAT strongly believes that the Commission must provide SGD options that enable people with speech disabilities to independently evaluate off-the-shelf products and select them, without the burden of depending on SLPs or other professionals.

d. Some people who have communication disabilities do not have an SLP to whom they regularly go, and do not have insurance that would cover the cost of going to see an SLP. If no compensation is provided, many eligible professionals may decline to participate in the authorization process. Alternatively, they may charge the customer for the time they spend on the application process, which would burden those customers that AB 136 intended to help.

e. To the extent that the certifying professional is expected to provide the information, the program must show how it will compensate the professional for the time it would take to ensure that appropriate professionals are willing to take on this task.

f. Using only SLPs with a Certificate of Clinical Competence to certify people for SGDs would create an unnecessary burden on customers with speech disabilities by limiting, rather than increasing, the available pool of certifying professionals.

g. Some customers may have an easier time seeking certification from another appropriate professional rather than seek out an SLP.

h. Some people with disabilities in California may be uninsured, and they should not be burdened with having to pay for an SLP's services.

i. Any professional evaluation that cannot be conducted in conjunction with another planned visit (such as an annual check-up) may generate co-pays, transportation costs, loss of work (by the customer or a family member), or attendant costs, that an eligible customer may struggle to afford.

3. Telecommunications Device

   a. A showing that the SGD contains a telecommunications component should not be a requirement.

   b. CforAT suggests that an SGD, like an artificial larynx, used by a person with a communication disability to generate speech, would be a telecommunications device, or at least have a telecommunications component, as it would allow the user access to the network.

4. Privacy

   a. With regard to 4.5.b more generally, this list of required information may raise privacy issues that are not addressed in the proposal. For example, if a

person is getting medical funding, certain information may be covered by Health Insurance Portability and Accountability Act (HIPAA) restrictions, and nothing in the proposal addresses how to protect these privacy concerns (or to maintain privacy of any customer data collected).

5. Training
    a. The statute does not preclude training through DDTP for these devices.
    b. Any prohibition on training would be a change from the way DDTP serves its other participants.
    c. Any training restriction that is not required by the statute would make participation in the program more burdensome for customers who need SGDs.
6. Application Process
    a. Burdensome/Barrier - The procedures and criteria set out in the rulemaking that a customer would have to satisfy in order to obtain an SGD through DDTP would be extremely burdensome to consumers and create a barrier to participation, given their limited resources and education.
    b. The Commission should develop an application form with a list of potential funding resources and a check box or other way for the customer to indicate that he or she is not eligible for funding from this source, and that this requires the qualifying process to also be accessible.
    c. For those customers who do need SGDs that qualify as medical devices, the Commission must develop forms that clearly guide the applicant through any process they must follow to seek funding, as well as any documentation that must be submitted.
    d. To the extent that certifying professionals are expected to provide the documentation and write-up, the issue of compensation for such professionals must be addressed.

7. Phased Proceeding

    a. The purpose of a pilot cannot be to evaluate whether to expand the program statewide based on the results; the legislature has already directed the Commission to create a statewide program.

    b. Such a limited roll-out would violate the statute which requires the Commission to develop a program to distribute SGDs to any subscriber who is certified as having a speech disability by January 1, 2014.

3.3. ATLC

ATLC states that Pub. Util. Code §§ 2881(d)(1)(B); and 2881(i)(3), directs the Commission to implement what SLPs recommend; and that an SLP evaluation is the prerequisite for an SLP recommendation.[4] ATLC posits that many SGD user/persons seeking SGDs from this program will have other sources of funding,[5] such as Medicare and insurance.

ATLC recommends that an SGD should be broadly defined,[6] to be inclusive rather than exclusionary; and the definition should be guided by Medi-Cal, the Washington state Medicaid, and Medicare.[7] Also, if tablets are to

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[4] L. Golinker e-mail dated May 24, 2013 – Status Report 1 attachment at 9.

[5] L. Golinker letter dated May 1, 2013 – Status Report 1 attachment at 25.

[6] L. Golinker letter dated May 1, 2013 – Status Report 1 attachment at 25.

[7] Medi-Cal, for example, defines an SGD as "an electronic or non-electronic aid or system which accommodates an expressive communication disability that precludes purposeful functional communication medically necessary to accomplish activities of daily living." http://files.medi-cal.ca.gov/pubsdoco/bulletins/artfull/dme201205.asp.

 Washington State Medicaid defines an SGD as "an electronic device or system that compensates for the loss or impairment of a speech function due to a congenital condition, an acquired disability, or a progressive neurological disease." WAC 399-543-1000.

Footnote continued on next page

be considered SGDs as part of this program, then, pursuant to the law, an SLP evaluation and recommendation must be performed regarding such equipment. Additionally, an SLP should be involved in the determination of appropriate accessories, given the custom nature of accessories based on a SGD user's needs.

The applicability of California sales tax to SGDs is based on Regulation 1591 of the California Board of Equalization.[8] This regulation applies to 'medicines and medical devices.' According to a 2007 letter from the Board of Equalization, SGDs are not exempt from this tax.

3.4. SCT

SCT believes that all potential SGD users should have access to the device best suited to their individual needs, as well as access to an SLP evaluation.[9] SCT believes that the role of an SLP in the recommendation of an SGD is important,[10] and that this SLP should be knowledgeable about SGDs. SCT states that SLPs spend several years in graduate school learning about the various types of speech disabilities and how they should be treated, which makes them uniquely trained to help make the appropriate SGD choice. SCT posits that the process of identifying need and selecting among alternative SGDs is not simple, and should not be performed by an ATP, an SGD user, or an SGD user's parents. Given what SCT believes is a limited number of knowledgeable SLPs, evaluations could be

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 Medicare defines an SGD as "speech aids that provide an individual who has severe speech impairment with the ability to meet his functional speaking needs." Medicare National Coverage Decision for SGDs (2001), posted for review at http://www.aacfundinghelp.com/funding_programs/medicare.html#c.

[8] L. Golinker letter dated May 8, 2013 – Status Report 1 attachment at 51.

[9] Dr. Bob Segalman e-mail dated May 29, 2013 – Status Report 1 attachment at 71.

[10] Dr. Bob Segalman e-mail dated May 22, 2013 – Status Report 1 attachment at 70.

done by remote access, such as Skype, which could be paid for with funds from this program.

3.5. Coggiola

Coggiola is an SLP at UCSF. She recommends tablets, computers, smartphones, and traditional SGDs to her patients; and states that SGD patient demand is gravitating towards mainstream technology.[11] Her experience is that traditional SGD's are expensive, have limited power, and variable quality; and that Medicare will pay for traditional SGDs but not for the tablets, laptops, desktops or smartphones.

4. Comments on Draft Rules

On June 14, 2013, the assigned ALJ issued a ruling via e-mail, in which she invited parties to comment on a set of Draft Rules, as set forth in Attachment C to this decision.

4.1.1. DRA

DRA supports the Draft Rules as proposed by the assigned ALJ, with several suggested changes. DRA believes that SGD users should have access to both traditional SGDs as well as tablets, such as iPads, or other devices that meet the statutory requirement of Pub. Util. Code § 2881(d)(1).

In response to other parties' recommendations that the term "qualified state or federal agency" be removed from Draft Rule 1, DRA states that this term must remain in the Draft Rule, as it is the statutory requirement of Pub. Util. Code §2881(d)(1). In a similar vein, DRA believes that the term

[11] Jennifer L. Coggiola of UCSF, e-mail dated May 24, 2013 at 84.

"telecommunications component" should remain in Draft Rule 4(a), as this term is pursuant to Pub. Util. Code § 2881(d)(1)(a).

After consideration of Coggiola's proposals, DRA agrees that, as part of Draft Rule 5, funding should be provided for training for SGD user and caregivers, repairs, and software upgrades to preserve the SLP-certified functionality of SGDs. DRA posits that since the SGDs available today are "mini-computer devices" that require software, software upgrades are necessary so that the SGD user is able to continue to use the SGD for the purposes set out in the code. For those same reasons, DRA believes that the program should pay for training and repair as well, since these devices cannot be used for proper purposes unless the SGD user and caregiver know how to use the SGD, and the SGD is functioning. Even though the applicable code does not mandate these provisions, they are not prohibited either. Therefore, DRA proposes the following revision to Draft Rule 5:

> A certified subscriber shall be provided access to SGD associated equipment that is recommended by an LSLP, *and ancillary services necessary for the SGD to meet the needs of the certified subscriber,* including the following equipment *and ancillary services*:
>
> a. Accessories;
> b. Mounting systems; ~~and~~
> c. Specialized telecommunications equipment, including infrared telephones, speaker phones, and telephone interface devices;
> d. Training on the use of the SGD and its associated equipment;
> e. Repair of the SGD and its associated equipment; and
> f. Replacement of the SGD and its associated equipment.

Consistent with CforAT's proposal, DRA proposes that Draft Rules 6, 7, and 8 should be clarified so as not to impose the requirements of Pub. Util. Code

§ 2881(e) on non-durable medical equipment (non-DME) SGD's, as DRA believes this section of the code only applies to DME SGDs.

DRA states that imposing the same requirements on DME and non-DME SGDs alike would add what DRA identifies as unnecessary burdens/requirements on SGD user who need a non-DME SGD; requirements that would hinder instead of assist those in need.

DRA proposes an amendment to Draft Rule 6 regarding non-DME SGDs:

> The Commission is the payer of last resort for SGDs ~~and SGD associated equipment~~ *that are classified as durable medical equipment under guidelines established by the United States Department of Health and Human Services as well as associated equipment for such SGDs. For SGDs that are not classified as durable medical equipment under guidelines established by the United States Department of Health and Human Services, and for associated equipment for such SGDs, certified subscribers may receive non-durable medical equipment SGDs through the same process that other Deaf and Disabled Telecommunications Program (DDTP)-eligible subscribers follow to receive non-SGD devices or equipment.*

DRA supports Coggiola's recommendation that the Commission consider developing an expedited process within the statutory requirements of Pub. Util. Code § 2881, to help reduce the time it would take to obtain an SGD for consumers that are terminally ill. DRA posits that this would provide terminally ill patients with an opportunity to communicate their last words to family, friends, and caretakers one more time.

DRA agrees with ATLC recommendation that the Commission develop a process for eligible SGD users who do not have public or private health insurance to obtain the necessary certification, SGDs, and ancillary services necessary to use them, consistent with program requirements.

4.1.2. CforAT

CforAT's over-arching concerns with any rules authorized herein are that such rules not be burdensome to the SGD user (financially, time spent in process, or need for others to assist), and the SGD applicant/user be allowed to choose equipment for his/herself. CforAT references two models regarding the treatment of individuals with disabilities - the "medical model" and the "independent living model." CforAT states that: 1) the medical model treats a disability as a condition to be cured, the people with the disability as patients, and relies on professionals for answers; while 2) the independent living model treats a disability as a civil rights issue, where the person with the disability is his/her own advocate/decision-maker. CforAT posits that the DDTP program has historically been structured along the independent living model, and the SGD program should retain that model.

CforAT believes that SGDs classified as DME by the U.S. Department of HHS should follow the requirements of Pub. Util. Code § 2881, but that non-DME SGDs (such as tablets) should not. Specifically, CforAT believes that one of the most important issues to be determined in this proceeding is the question of whether to interpret the requirements of Pub. Util. Code § 2881(e) to treat all SGDs, both DME and non-DME, in the same manner for authorization and funding. CforAT posits that the process of obtaining a DME can be long and complex, while the process of obtaining a non-DME such as a tablet could be managed by DDTP and a tablet could be acquired through a simpler process.

CforAT proposes no changes to Draft Rules 1, 2, 3 and 9. CforAT supports subsections (a)-(c) of Draft Rule 4, but believes that subsection (d) of this rule should not be applied to non-DME, and suggests the following revision:

> Is based on the *individual* recommendation of an LSLP *for those SGDs that meet HHS guidelines as DME, and is available from*

inventory maintained by DDTP as based on the recommendation of an LSLP or a panel of LSLPs for those SGDs that do not meet HHS guidelines as DME.

While CforAT supports the important work done by SLPs and recognizes that people with speech disabilities can generally benefit from individual consultation with an SLP, some individuals with speech disabilities will be unable or unwilling to consult with an SLP for a variety of reasons. Those individuals may, instead, choose to go without another vital service in order to have sufficient funds to cover the cost of an SLP recommendation. CforAT believes these people should not be excluded from the SGD program. Logistical and financial issues that may arise include: 1) an SGD applicant/user's disability has not changed for many years, so the SGD/applicant/user may not have a current relationship with an SLP; 2) finding an SLP can be challenging, as some SGD applicants/users lack access to the telecommunications network (both phone and computer access); 3) the general difficulty of locating an SLP may be aggravated by the shortage and location of SLPs in California, particularly in rural areas; 4) If an appointment with an SLP is made, the SGD applicant/user needs to arrange for wheelchair accessible transit (at the SGD applicant/user's own cost), the services of an attendant, accommodations, childcare, and the need to take time off of work; and 5) the SGD applicant/user may lack insurance. CforAT suggests that these concerns could be resolved if the program relies upon broad recommendations of an SLP or a panel of SLPs regarding non-DMEs, and if the DDTP were to maintain an inventory of such devices. The DDTP could loan non-DME SGDs to an SGD applicant/user without the SGD users having to go through the process required for a DME SGD.

CforAT supports the proposal to provide access to accessories, mounting systems, and specialized telecommunications equipment. Consistent with its

recommendation regarding Draft Rule 4, CforAT believes an inventory of associated equipment for non-DME SGDs can be maintained by DDTP and loaned to SGD users, without going through the same process used by SGD users with a DME SGD.

CforAT believes that pursuant to Pub. Util. Code §§2881(e), any program rule developed in order to effectuate it should be limited to DME SGDs (and associated equipment). CforAT proposes that the language of Draft Rule 6 be revised to state:

> The Commission is the payer of last resort for SGDs *and SGD associated equipment that are classified as durable medical equipment under guidelines established by the United States Department of Health and Human Services as well as associated equipment for such SGDs.*

CforAT further recommends an additional rule regarding payment for non-DME SGDs:

> *For SGDs that are not classified as durable medical equipment under guidelines established by the United States Department of Health and Human Services, and for associated equipment for such SGDs, the Deaf and Disabled Telecommunications Program shall engage a qualified SLP or a panel of qualified SLPs to make recommendations regarding appropriate inventory, and then the recommended devices shall be made available by loan to eligible customers, consistent with other devices provided to DDTP-eligible customers.*

CforAT believes these revisions would be consistent with the existing DDTP program, and would avoid what CforAT identifies as a burdensome bureaucratic process for non-DME SGDs.

Consistent with its recommendation regarding Draft Rule 6, and in keeping with § 2881(e), this rule should only apply to DME SGDs. Thus, CforAT proposes that Draft Rule 7 be revised to state as follows:

> Certified eligible subscribers *who are requesting devices that are classified as durable medical equipment under guidelines established*

> *by the United States Department of Health and Human Services* must first obtain and/or investigate coverage for payment of an LSLP recommended SGD and/or SGD associated equipment from all available public and private insurance.

Consistent with its other recommendations, CforAT believes that Rule 8 should be amended so that the rule is different for DME and non-DME SGDs. For DME SGDs, CforAT believes that provisions (b) and (c) of Draft Rule 8 are consistent with the requirements of § 2881(e), but that subsection (a) is not required by statute. CforAT posits that SGD applicants/users that have the resources to pay up-front for a DME SGD should be able to do so in order to receive such device quickly. These SGD users could then seek reimbursement through a direct payment from the program to themselves, contingent on proper documentation of the payment made by the subscriber and the device received. Thus, CforAT proposes breaking up and revising Draft Rule 8 as follows:

> Draft Rule 8a: *For devices that are not classified as durable medical equipment under guidelines established by the United States Department of Health and Human Services, all* funds the Commission provides for purchase of *an LSLP recommended SGD and/or SGD such devices and/or* associated equipment, *as recommended by an LSP or a panel of LSPs*, shall be made to the manufacturer, vendor, or other entity the Commission designates.
>
> Draft Rule 8b: *For devices that are classified as durable medical equipment under guidelines established by the United States Department of Health and Human Services,* (ab) The certified subscriber shall provide documentation of all *other available* funding sources (public and private insurance) that she/he is eligible for and receives for the cost of an LSLP recommended SGD and/or SGD associated equipment to the California Public Utilities Commission, including but not limited to: (1) the SGD that is available from her/his public or private insurance; and (2) the cost to the certified subscriber of any deductible, copayment, or benefit cap; and (bc) The total cost of an LSLP recommended SGD and/or SGD associated

> equipment, for a certified subscriber shall not exceed the most current rate of reimbursement provided by Medi-Cal for the recommended SGD and/or SGD associated equipment. *Costs covered by the program can be paid to the manufacturer or vendor of the device or equipment. If the costs were advanced by the subscriber, they can be reimbursed by the program upon receipt of appropriate documentation, with the same cap as would be applicable to any other recipient.*

CforAT has no proposed changes to Draft Rule 9, but believes that the use of non-DME SGDs in a manner consistent with the existing DDTP practices (maintaining an inventory of the devices), will result in reduced costs for the program relative to the rules as drafted. Doing so would make it less likely that a revision to the surcharge amount would be necessary.

In response to ATLC's comments regarding the need for an SLP evaluation, CforAT reiterates its position that no scenario contemplates every Californian with a speech disability being able or willing to access the services of an SLP. ATLC contends that these individuals either do not need or do not want the services of an SLP and should not be forced to receive the services of an SLP in order to obtain an SGD through the DDTP program. Nor should these individuals be excluded from the program if they cannot or will not receive the services of an SLP. Based on what it denotes as informal responses from SLPs, CforAT states that there are not enough SLPs in California to provide the certification service required by the draft rules. CforAT also states that ATLC downplays the financial and logistical hurdles discussed by CforAT, and does not consider what CforAT identifies as the "substantial time, effort, and money" to access the services of an SLP. CforAT also refers to ATLC's position in favor of an SLP evaluation as one that is an example of the medical model that denies the individual with the disability the opportunity to choose for themselves.

In opening comments, CforAT proposed that devices that do not meet the guidelines of HHS as DME be treated differently than devices that do meet HHS guidelines as DME. Effectively, this would create a different distribution model for DME and non-DME SGDs. In its opening comments, ATLC argues that tablet computers (pursuant to an SLP recommendation) can be locked to meet DME guidelines, shipped to the SGD user, and subsequently unlocked by the SGD user. CforAT does not believe that this "lengthy and burdensome process" is preferable to its recommendation of having tablet computers on hand with the DDTP for the purpose of loaning them to SGD user.

CforAT also disagrees with ATLC's recommendation that SLP assessment will have been performed within 12 months of the application date. CforAT posits that this would have the effect of discouraging or excluding people with static disabilities, and thus no recent certification, from participating in the program.

4.1.3. Coggiola

Throughout, the Coggiola representative proposes changing LSLP to SLP, which is the common acronym used. Coggiola suggests that the Commission consider omitting the term "qualified state or federal agency" from Draft Rule 1, since, Coggiola posits that a person, not an institution, makes this decision.

Coggiola recommends that the term "a telecommunications component" be removed from Draft Rule 4.a, as all SGDs produce speech output and can be used with a speakerphone; meaning all SGDs have a telecommunications component. Coggiola questions whether Draft Rule 4b refers to what it identifies as "full modern-day telecommunications (audio, video and text transmission),"or if the rule should be written as "telephone and internet network." Coggiola agrees with Draft Rule 4d.

Coggiola proposes that the term "software" be included as associated SGD equipment in Draft Rule 5. Coggiola makes this proposal as it wants to ensure that all parts of an SGD, including those assembled by the manufacturer or distributor, as well as those assembled by an SGD user's support team, and are covered by the current program. For example, Coggiola posits that an SGD user may require speakers, a mount, or a more powerful computer that may not be provided by an SGD manufacturer; and would have to be assembled by the SGD user support team.

Overall, Coggiola agrees with Draft Rule 6, and believes that in most cases this rule will help reduce program costs. Coggiola provides the example of the program either paying $800 for an off-the-shelf iPad or $1,400 for the 20% remaining after a DME SGD coverage where Medicare has been applied.

Coggiola is also concerned that SGD applicants who are terminally ill with months to live would not have the time to go through the pre-authorization process of determining insurance coverage prior to receiving the balance of funding through this program. Coggiola suggests that such SGD applicants/users could receive directly go to the DDTP and skip the attempt to bill insurance.

4.1.4. ATLC

ATLC had no comments to Draft Rules 2, 3, and 9. The statute and proposed Draft Rule 1 identify specific professionals who can perform this task (physician or SLP). By contrast, it is impossible for an "agency" to perform this task. An agency may be the holder of records that establish or confirm the existence of speech disability, but, ATLC argues, the agency, by itself, cannot make that determination. Several agencies make determinations of "disability" that are pre-requisites to receipt of benefits or services, but in each one, those

determinations are based on input from a physician or SLP, such as a school district. ATLC asserts that the statutory reference to a state or federal agency should not be interpreted to authorize any other individual or professional to provide certification of speech disability. ATLC proposes an alternative way to address the need for certification of speech disability:

> This certification shall be provided by a licensed physician, licensed speech-language pathologist (LSLP), or qualified state or federal agency *based on an assessment or evaluation performed for the specific purpose of the DDTP application, or can be retrieved from records of an assessment or evaluation performed within 12 months of the date of the DDTP application.*

ATLC's proposal would limit the certifying officials to physicians and SLPs, and would insert a measure of timeliness. Timeliness of evaluation for the purposes of certification is important; speech disabilities may change over time – some improve, while others get worse. A reasonable period would be 12 months prior to the date of the application to the DDTP for an SGD.

ATLC also recommends that the reference to speech-language pathologists in these rules use the acronym "SLP" rather than LSLP as stated in the draft. Licensure is a pre-requisite for practice in California and for recognition as a certifying authority under these rules.

ATLC posits that it is appropriate that this rule reference one class or type of SGDs, because there are no fact-based distinctions between tablets and traditional SGDs. As demonstrated at the June 26, 2013 working group meeting, ATLC argues that iDevices are used as "DME" SGDs; all the tablet-based computer operating systems are used as "DME" SGDs; and all "DME" SGDs are recognized as eligible or covered for funding by public or private insurance sources.

Many individuals who use SGDs have additional disabilities that affect, *inter alia*, movement, vision and hearing. As a result, a wide range of related equipment or peripheral devices has been developed to ensure SGD user can physically access the device and can move it safely from place to place. But, ATLC asserts, these differences in functioning do not warrant consideration or creation of distinct categories of SGDs, with distinct procedures for access. Rather, ATLC claims, the SLP must assess these factors and ATLC these features to the unique abilities and needs of the individual with severe or complex communication impairment.

ATLC also posits that all SGDs are telecommunications devices because they will produce speech that can supplement or substitute for an SGD user natural voice to provide access to and use of the telephone network. The SGD, ATLC argues, will provide the same functional benefit in regard to telephone access and use: production of oral speech that an artificial larynx – already covered and provided by the DDTP – will provide. Because all SGDs are telecommunications devices, an alternative is proposed here. Because the purpose of this rule is to define SGDs, ATLC proposes the following definition, which is an adaptation of the Medi-Cal definition of SGDs:

> *SGDs are an electronic aid, device, or system that produces speech output to accommodate an expressive communication disability that precludes an individual from meeting the communication needs arising in typical daily activities, including telephone use.*

Proposed rule 4(d) re-states the text of the statute, § 2881(d)(1)(B), that all SGDs provided or distributed under the program must be based on an SLP recommendation. ATLC posits that this text is appropriate and should not be changed.

The Working Group has received proposals to excuse some SGDs from the need for an SLP evaluation and recommendation. Four primary excuses support this proposal:

1. SLPs are few in number and hard to find;
2. Evaluations are long and burdensome;
3. There may not be funding available for the individual to pay for the evaluation; and
4. SGD user and their families either on their own or with the assistance of non-SLPs are able to make their own decisions.

ATLC claims that none of these excuses can change the Legislature's command that SGDs to be distributed by the program and related equipment to be distributed by the program, be based on SLP recommendation, and that none of these excuses provides a factual justification for any change in the text of this proposed rule even if such change was permissible. SLPs are uniquely trained, experienced – state licensed – professionals who will:

1. identify and diagnose communication impairment;
2. determine its severity and course;
3. make a prognosis;
4. consider all the related functional issues that may affect communication either by voice, by non-voice output augmentative and alternative communication techniques, or by SGD;
5. consider a broad range of SGDs and make a recommendation of the most appropriate device and software for the individual to meet daily communication needs;
6. consider and select the most appropriate access aids to ensure the device can be used most efficiently;

7. set up the device to make its language, display, message assembly, storage and retrieval mechanisms as efficient as possible; and
8. provide training to the individual regarding its use, making adjustments as necessary.

ATLC further argues that no other professional and no non-professional has the range of skill and experience, all of which is required to make a recommendation of the most appropriate SGD to meet an individual's communication needs.

ATLC also believes that the contention that SLP evaluations are long and burdensome represents a completely subjective opinion. The proper assessment of all the factors that impact communication function requires time and thoughtful consideration. ATLC claims that SLP evaluations will be as long as necessary to gather all the data relevant to the professional judgments that have to be made. The model for SLP evaluation is the evaluation outline or "protocol" of the Medicare program, which Medicare staff and SGD clinicians, researchers and educators developed over a period of 18 months, from 1998-2000.

The claim that the newest tablet-computer plus software based SGDs should be exempt from SLP evaluation, ATLC argues, is impermissible based on the statute. The purpose of the SGD that the DDTP would be providing is to enable access to and use of the telecommunications network. The fact that information is now available and accessible to enable members of the general public to be better educated about health issues – including SGD choices – ATLC claims has not created any less need for or benefit from medical professional involvement in assessment, treatment recommendation or treatment delivery. An "educated consumer" is not a substitute for a professional in any of these roles.

Independent living has as its core principle that individuals with disabilities are entitled to be given information relevant to their health and life

circumstances and with that information to make their own life choices. Accordingly, ATLC believes that this principle is not inconsistent with SLP evaluation or for a person with a disability to go to any other medical professional. SLP evaluations provide information to participants as well as generate information for consideration by the SLP.

Nothing in the statute supports distribution of SGDs based on the desires, as opposed to the needs, of the SGD user. ATLC believes that this form of distribution would ignore the cost in actual harm to health and well-being if the SGD user is unable to communicate effectively with the SGD she/he wanted, versus the SGD she/he needed.

ATLC also argues that nothing in the statute prohibits the program from paying for an SLP evaluation, in whole or part, when an individual reports that no other funding source is available. In correspondence dated May 28, 2013, ATLC suggests that a proposal for the DDTP to offer SLP evaluation be added to Rule 4.

ATLC proposes a second addition to the proposed rules, that the content of the SLP evaluation must support a recommendation. Because of the cost-sharing requirement of Section 2881(e), ATLC believes it is appropriate for the program administrator to accept the funding protocols and reports that other funding programs require. An addition to Rule 4 would state:

> *The SLP recommendation may be based on the evaluation and reporting requirements of any other public or private insurance program, so long as it includes a clear statement of evaluation of the subscriber's need for an SGD to access or to use the telephone network.*

ATLC believes that Draft Rule 5 tracks the language of the statute at Section 2881(i)(1), which authorizes the coverage of related equipment for SGDs. This is wholly appropriate, ATLC states, because for many individuals such

equipment items are essential to ensure SGDs the program distributes would be able to be used by and will provide benefits to the subscriber.

ATLC recommends that SGD software be added to the list of related equipment. A subscriber may already own a computer that can function as an SGD by the addition of SGD software. To support purchase of the software, however, ATLC argues, would be a means to enable the individual to access and use the telephone network at far lower cost to the program than if a hardware device also had to be provided. Medicare recognizes this cost savings opportunity and has a separate coverage category for SGD software.

ATLC believes that Draft Rule 6 is accurate and should not be changed. The effect of Draft Rule 6, ATLC asserts, would be that cost-sharing must be considered for all SGDs and for all related equipment the program distributes.

ATLC supports Draft Rule 7, but suggests that it could be presented as a second sentence to Rule 6. ATLC also posits that separate sub-rules for different types of funding, i.e., funding for which prior authorization is received versus a claim that is subsequently reimbursed, would provide clear guidance to the SGD applicant regarding what information he/she should provide and at what stage in the funding process such information should be provided to the program administrator. ATLC suggests adding the following text for this Rule:

1. *Subscribers who are beneficiaries of public or private insurance programs that utilize "prior authorization" procedures are required to obtain a decision in regard to coverage and claim for payment before seeking benefits from the DDTP.*
2. *Subscribers who are beneficiaries of public or private insurance programs that utilize "claims reimbursement" procedures, requiring prior purchase of equipment items before requests for coverage or payment of claims can begin can file application with the DDTP before that procedure is initiated. Applications that meet the requirements of the program will receive an assurance of payment from the DDTP. An assurance of payment is an*

> *authorization by the DDTP of payment for the requested SGD and related equipment items consistent with these rules, after a decision has been issued in the claims reimbursement procedure of available public or private insurance sources.*

ATLC posits that the addition of these two sub-paragraphs will inform SGD applicants/users and manufacturers of their expectations regarding the "payor of last resort" requirement.

ATLC finds that Draft Rule 8 is consistent with the text of the statute. ATLC proposes that instead of "the certified subscriber" providing the documentation, such documentation should, for practical purposes be submitted by the SGD manufacturer:

> The certified subscriber *of a complete application for DDTP SGD and related equipment distribution* shall provide documentation of all other funding sources (public and private insurance) that she/he is eligible for and receives for the cost of an LSLP recommended SGD and/or SGD associated equipment to the California Public Utilities Commission, including but not limited to: 1) the SGD that is available from her/his public or private insurance; and 2) the cost to the certified subscriber of any deductible, copayment, or benefit cap.

ATLC proposes further rules regarding training for users and the repair, replacement, and upgrade of equipment. ATLC also believes it would be necessary and appropriate for the program to pay for training by an SLP so that the SGD and related equipment provided is set up and programmed appropriately; that orientation is provided to the individual and family; and that the individual is given adequate instruction to ensure the goals of the program will be met. ATLC notes that the statute says training is not a required activity, but does not prohibit the expenditure of funds for this purpose.

ATLC recommends that a rule be added providing for payment for repair when a device no longer is functioning properly, for replacement based on

change of the individual's condition or some other factor that causes an existing device to no longer meet the subscriber's daily communication needs.

As a final comment, ATLC provides an outline of how the SGD program should operate once rules are in place. The outline suggests tasks and roles that are operationally required but are not necessarily appropriate for codification as program regulations. ATLC recommends that the DDTP produce a pamphlet or brochure that outlines the several steps and information required for SGD access. In particular, ATLC suggests administrative tasks regarding the certification and application process for SGD applicants/users that have public or private insurance and those that do not.

In its Reply Comments to the Draft Rules, ATLC disagrees with CforAT's position that an individual SLP recommendation and referral should only be required for provision of a traditional SGD, and not an off-the-shelf tablet SGD. ATLC believes that a panel of SLPs would not be able to provide recommendations regarding non-DME SGDs, because the determination of an appropriate SGD is focused primarily on the person and not the device, and requires the professional judgment of the SGD applicant's/user's abilities and requirements to choose the appropriate SGD for that SGD user. ATLC states that CforAT provides its personal opinion which ATLC posits is not based on the statutory language of the applicable code.

4.2. Discussion

We recognize the validity and importance of the various parties' positions, and utilize their input to the extent such input is within the boundaries of the statute. We believe that the legislative intent of Pub. Util. Code § 2881, allows us to develop an SGD distribution program pursuant to Pub. Util. Code § 2881(d); and may develop a distribution program for supplemental telecommunications

equipment, such as tablets and other assistive devices, pursuant to the balance of Pub. Util. Code § 2881 and existing DDTP rules. The balance of this discussion is therefore separated into our development of rules governing: 1) distribution of SGDs pursuant to Pub. Util. Code § 2881(d); and 2) distribution of supplemental telecommunications equipment pursuant to the balance of Pub. Util. Code § 2881, on which the existing DDTP program is based. This allows the Commission to provide needed options to speech-disabled persons in need; thus allowing the speech-disabled person to choose whether they would prefer the assistance of an SLP or not, as well as the type of device they feel most comfortable using.

4.2.1. Rules Pursuant to Pub. Util. Code § 2881(d)

The Commission finds that the Draft Rules set out by the assigned ALJ are consistent with Pub. Util. Code § 2881(d), and provide sufficient guidance to program participants. These rules shall address the distribution of only those SGDs that comply with the definition set out by the HHS[12] as required by Pub. Util. Code § 2881.

DRA recommends that Draft Rule 5 also provide for the training of SGD users and their caregivers, as well as repair and replacement of the SGD. Pub. Util. Code § 2881(f) does not require the Commission to provide training for SGD users, nor does Pub. Util. Code § 2881 mention provision of repair or replacement of an SGD received through this program. Since most SGD users have access to other and better sources of training, repair, and replacement, we do not provide funding for such activities. DRA also recommends that Draft Rule 6 only apply to HHS-defined SGDs. As we set out separate rules regarding the distribution of HHS-defined SGDs and a distribution program for

Supplemental Telecommunications Equipment pursuant to the balance of Pub. Util. Code § 2881, no revision is necessary to clarify the applicability of the rule with regards to HHS-defined SGDs only.

CforAT proposes a number of revisions to Draft Rules 6, 7, and 8, all of which are in regards to treating HHS-defined SGDs and other SGDs differently. As discussed above regarding DRA's recommended revision to Draft Rule 6, since we set out separate rules regarding the distribution of HHS-defined SGDs and supplemental telecommunications equipment herein, no revision is necessary to the rules governing HHS-defined SGDs. CforAT also suggests that the guidance of SLPs and other experts be utilized by the Commission, administrator, and DDTP regarding speech-generating applications.

Coggiola proposes that Draft Rule 1 should not include the term "agency" regarding assessment and certification of an SGD applicant/user, because a person, not an institution makes such a recommendation. The Commission understands Coggiola's concern, but Pub. Util. Code §2881(d) specifically identifies a "qualified state or federal agency" as one of the entities that shall provide such service. Therefore we deny Coggiola's proposal to remove "agency" from Draft Rule 1.

Coggiola also suggests that Draft Rule 4 be revised to include access to the internet because Pub. Util. Code §2881 (d)(1)(B) refers only to "the telephone network." Since access to the Internet was not identified as an issue in the OIR, it is outside the scope of the current proceeding therefore we cannot require or prohibit access to the Internet through an HHS-defined SGD. Accordingly, we must reject Coggiola's proposal to expand the applicability of Draft Rule 4.

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[12] http://www.hhs.gov/regulations

Coggiola also suggests that "software" be added to the items covered in Draft Rule 5. We find that "software" falls under the term "accessories", which is already part of the draft rule. Therefore, we reject the addition of the term "software," and retain the more general and less limiting language of the draft rule.

Coggiola also proposes consideration of an additional rule that would provide an exemption to the rules developed herein. The proposed exemption would address provision of an SGD to terminally ill SGD users who would not have the time to go through the application process. Even though Pub. Util. Code § 2881 does not address this eventuality; we find that providing some form of an exemption would assist those in need. Therefore, the Commission will explore options in the second phase of this proceeding regarding development of an exemption or an expedited application process for instances where this is needed or desirable.

ATLC suggests that the rules should use the Medi-Cal definition of an SGD to identify such equipment. In an effort to address ATLC's concerns and clarify the SGD Rules adopted herein, the Commission includes the current HHS definition[13] (and its successors) of a DME SGD in the SGD Rules. ATLC also

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[13] http://cms.hhs.gov/medicare-coverage-database/details/ncd-details.aspx?NCDId=274&ncdver=1&bc=AgAAQAAAAAAAAA%3D%3D&.

Durable Medical Equipment

Note: This may not be an exhaustive list of all applicable Medicare benefit categories for this item or service.

Item/Service Description

Speech generating devices are defined as speech aids that provide an individual who has a severe speech impairment with the ability to meet his functional speaking needs. Speech generating are characterized by:

Footnote continued on next page

- Being a dedicated speech device, used solely by the individual who has a severe speech impairment.
- May have digitized speech output, using pre-recorded messages, less than or equal to 8 minutes recording time.
- May have digitized speech output, using pre-recorded messages, greater than 8 minutes recording time.
- May have synthesized speech output, which requires message formulation by spelling and device access by physical contact with the device-direct selection techniques.
- May have synthesized speech output, which permits multiple methods of message formulation and multiple methods of device access.
- May be software that allows a laptop computer, desktop computer or personal digital assistant (PDA) to function as a speech generating device.

Devices that would not meet the definition of speech generating devices and therefore, do not fall within the scope of § 1861(n) of the Act are characterized by:

- •Devices that are not dedicated speech devices, but are devices that are capable of running software for purposes other than for speech generation, *e.g.*, devices that can also run a word processing package, an accounting program, or perform other non-medical function.
- Laptop computers, desktop computers, or PDAs, which may be programmed to perform the same function as a speech generating device, are non-covered since they are not primarily medical in nature and do not meet the definition of DME. For this reason, they cannot be considered speech generating devices for Amedicare coverage purposes.
- A device that is useful to someone without severe speech impairment is not considered a speech generating device for Medicare coverage purposes.

Indications and Limitations of Coverage

Effective January 1, 2001, augmentative and alternative communication devices or communicators, which are hereafter referred to as "speech generating devices" are now considered to fall within the DME benefit category established by § 1861(n) of the Act.

Footnote continued on next page

proposes that Draft Rule 4 should be revised to require the inclusion of a statement in the SLP evaluation that the SGD is needed for telephone use. Since other parts of the Draft Rules address the type of SGD being provided, we find this additional language to be redundant. Accordingly, we will not revise Draft Rule 4.

ATLC also recommends that Draft Rule 7 be revised to include different types of reimbursement depending on whether the SGD user receives prior authorization for funding but no funding up front, versus payment by the SGD user with claims reimbursement from the SGD user's insurance provider. We find that the broader language of Draft Rule 7 provides more options for the administrator to address whatever eventualities regarding insurance recovery arise. Therefore, we do not revise Draft Rule 7 pursuant to ATLC's recommendation. ATLC recommends that the documentation (Draft Rule 8) should be provided by the manufacturer instead of the SGD user. Since Pub. Util. Code § 2881(e)(2) requires that the SGD user provide the documentation, Draft Rule 8 remains intact. ATLC also recommends that the term SLP be used instead of LSLP. As SLP appears to be the term of art typically used, we use the term SLP, and revise the draft rules throughout.

4.2.1.1. Conclusion Regarding Rules Pursuant to Pub. Util. Code § 2881(d)

We therefore find that the Draft Rules as modified herein to include an HHS definition of DME SGDs, provide sufficient guidance to begin the participation and administration of the SGD distribution program pursuant to

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They may be covered if the contractor's medical staff determines that the patient suffers from a severe speech impairment and that the medical condition warrants the use of a device based on the definitions above.

Pub. Util. Code § 2881(d). The Commission recognizes that SGD Rules must be adopted by January 1, 2014, but that further guidance for Communications Division (CD) staff and/or the administrators of the SGD distribution program is necessary.

Therefore, upon issuance of this decision, CD staff shall implement the SGD Rules adopted herein; and more detailed instructions regarding administration of the SGD distribution program shall be addressed in a second phase of this proceeding. Also, expanding on CforAT's proposal to request advice from experts regarding speech generating applications, the second phase of this proceeding will consider whether the Commission staff should request guidance from SLPs and other experts regarding equipment and applications provided by the SGD distribution program. The Commission requires the assigned ALJ to request input from parties to this proceeding within 30 days of the issuance of this decision.

The Commission shall also explore options regarding development of an exemption or an expedited application process for instances where this is needed or desirable, in the second phase of this proceeding.

These now Final Rules are in compliance with the operative legislation while still providing users with the flexibility of access to whichever SGD is recommended by the SLP. We adopt the SGD Rules as discussed herein, in order to implement the provisions of AB 136. In particular, we authorize the addition of SGD Rules that govern the access to and distribution of HHS-defined SGDs to any subscriber who is certified as having a speech disability requiring this device (see Attachment A). In adopting SGD Rules, we considered input of the parties, the requirements of AB 136, and the interests of SGD users and providers. The SGD Rules adopted herein (see Attachment A), provide SGD users and

providers, as well as other interested parties, with the guidance required by AB 136.

4.2.2. Supplemental Telecommunications Equipment Rules

The Commission also finds it appropriate to undertake a trial for distributing supplemental telecommunications equipment that would, as discussed earlier, expand options, or serve as a substitute for the SGDs contemplated by Section 2881(d). The purpose of this trial would be to provide alternative equipment for those speech-disabled persons who cannot or would rather not receive the services of an SLP, and/or would rather choose a telecommunications assistive device for themselves. This supplemental telecommunications equipment shall follow within the existing legislative framework for DDTP distribution of equipment, (i.e., requires certifying agent's signature). The assistive device (such as tablets and other assistive devices) provided to the speech-disabled person must qualify under Pub. Util. Code § 2881(c), which states that:

> The commission shall also design and implement a program whereby specialized or supplemental telephone communications equipment may be provided to subscribers who are certified to be disabled at no charge additional to the basic exchange rate. The certification, including a statement of visual or medical need for specialized telecommunications equipment, shall be provided by a licensed optometrist, physician and surgeon, or physician assistant, acting within the scope of practice of his or her license, or by a qualified state or federal agency as determined by the commission. The commission shall, in this connection, study the feasibility of, and implement, if determined to be feasible, personal income criteria, in addition to the certification of disability, for determining a subscriber's eligibility under this subdivision.

4.2.2.1. Conclusion Regarding Supplemental Telecommunications Equipment Rules

We therefore find that the rules set out below, identified as Supplemental Telecommunications Equipment Rules, provide sufficient guidance for the participation and administrative of the distribution program of such assistive technology, pursuant to the balance of Pub. Util. Code § 2881, in particular, Pub. Util. Code § 2881(c) and existing DDTP Rules. As discussed above regarding SGD Rules, upon issuance of this decision, CD staff shall implement the Supplemental Telecommunications Equipment Rules adopted herein; and more detailed instructions regarding administration of and expert guidance regarding the Supplemental Telecommunications Equipment Rules shall be addressed in a second phase of this proceeding. The assigned ALJ will request the input regarding further guidance within 30 days of the issuance of this decision.

These now final rules are in compliance with the operative legislation while still providing users with the flexibility of access to whichever assistive technology they prefer, as long as it is in compliance with the above referenced Public Utilities Code and DDTP rules. We adopt the following rules:

1. Supplemental telecommunications equipment (such as tablets or other assistive devices that assist the subscriber in accessing or using the telecommunications network) shall be provided to subscribers who are certified to be disabled at no charge additional to the basic exchange rate.
2. The certification, including a statement of medical need for specialized telecommunications equipment, shall be provided by an SLP, licensed optometrist, physician and surgeon, or physician assistant, acting within the scope of practice of his or her license, or by a qualified state or federal agency.

4.2.3. Other

Given a variety of concerns voiced by parties regarding the level of funding pursuant to Pub. Util. Code § 2881 and the two sets of rules adopted herein, and to provide the parties and the Commission an opportunity to assess the current level of funding available, the Commission requires that, no later than July 31, 2014, CD staff shall serve a brief report in this proceeding regarding: 1) how much money was spent during the first six months of the SGD distribution program and the Supplemental Telecommunications Equipment program; 2) whether an adjustment to the current DDTP surcharge is necessary; 3) should there be a cap on the amount spent on DME SGDs and Supplemental Telecommunications Equipment (by each piece of equipment and by user); and 4) if a cap should be in place, what should that amount be.

Within 30 days of the date of this decision, the assigned ALJ shall request further guidance from parties regarding the following finance issues that may become a concern before the program has been in place for six month: 1) develop guidelines for CD staff to follow where funding from other sources has been denied and the Commission may be responsible for full funding of SGDs.

5. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this OIR.

6. Comments on Proposed Decision

The proposed decision of the Commissioner in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of practice and Procedure. Opening comments were filed on November 25, 2013 by Coggiola, ATLC, CforAT, and ORA. Reply comments were filed on December 2,

2013 by ATLC, CforAT, and ORA. Comments have been considered in this decision.

Findings of Fact

1. On October 2, 2011, Governor Edmund G. Brown, Jr. signed into law AB 136 (Beall, Statutes 2011, Chapter 404, effective January 1, 2012). This legislation amended § 2881, as it relates to telecommunications. Per AB 136, the Commission must adopt rules to implement the SGD program by January 1, 2014.

2. The DDTP offers assistive telecommunications services and equipment to California residents who are certified as having a hearing, speech, mobility, vision, or cognitive disability.

3. The current DDTP is funded via a surcharge assessed on revenues collected from end-users for all intrastate telecommunications services in California. Pursuant to SB 669 (1999) and AB 1734 (2002), the DDTP Committee Fund, was created to hold these surcharge funds.

4. Prior to enactment of AB 136, § 2881(d) required that the DDTP provide specialized telecommunications equipment such as amplified phones, speakerphones, and TTYs to consumers with hearing, vision, mobility, speech or cognitive disabilities. This equipment is provided through the DDTP's CTAP.

5. With the institution of AB 136 (2011), the annual DDTP expenditures will increase. Legislation requires that SGD rules be in place by January 1, 2014.

6. The current DDTP surcharge is expected to cover this increase in DDTP expenditures.

7. R.13-03-008 was issued on March 26, 2013 in order to address implementation of rules for AB 136.

8. The legislative intent of Pub. Util. Code § 2881 provides that the Commission shall develop an SGD distribution program pursuant to Pub. Util. Code § 2881(d); and may develop a distribution program for supplemental telecommunications equipment, such as tablets and other assistive devices, pursuant to the balance of Pub. Util. Code § 2881 and existing DDTP rules.

9. The two separate sets of rules authorized herein (SGD Rules and Supplemental Telecommunications Equipment Rules) allow the Commission to provide needed options and alternatives to speech-disabled persons in need; thus allowing the speech-disabled person to choose whether they would prefer the assistance of an SLP or not, as well as the type of device they feel most comfortable using.

10. Pub. Util. Code § 2881(f) does not require the Commission to provide training for SGD users, nor does Pub. Util. Code § 2881 mention provision of repair or replacement of an SGD received through this program.

11. Most SGD users have access to other and better sources of training, repair, and replacement.

12. Pub. Util. Code § 2881(d) specifically identifies a "qualified state or federal agency" as one of the entities that shall provide such service.

13. Pub. Util. Code § 2881(d)(1)(B) refers only to "the telephone network."

14. The term "software" falls under the term "accessories," which is already part of Draft Rule 5.

15. Pub. Util. Code § 2881 does not address an exemption from the rules for provision of an SGD to terminally ill SGD users who would not have the time to go through the application process.

16. Pub. Util. Code § 2881(e) specifically identifies an SGD pursuant to the HHS definition.

17. Pub. Util. Code § 2881(e)(2) requires that the SGD user provide the requested documentation.

18. SLP is the term of art typically used to identify a Speech Language Pathologist.

19. The final SGD Rules adopted herein provide sufficient guidance for the participation and administration of the SGD distribution program pursuant to AB 136 and Pub.Util. Code § 2881(d), are in compliance with the operative legislation, and provide speech-disabled persons with the flexibility of access to whichever SGD is recommended by the SLP.

20. The distribution of supplemental telecommunications equipment only requires the signature of a certifying agent, and includes distribution of assistive devices such as tablets and other assistive devices pursuant to Pub. Util. Code § 2881(c).

21. The Supplemental Telecommunications Equipment Rules adopted herein, are in compliance with the operative legislation while still providing users with the flexibility of access to whichever assistive technology they prefer, as long as it is in compliance with the above referenced Public Utilities Code and DDTP rules.

22. The current definition of a DME SGD pursuant to HHS is as follows:

a. Speech generating devices are defined as speech aids that provide an individual who has a severe speech impairment with the ability to meet his functional speaking needs. Speech generating are characterized by:

i. Being a dedicated speech device, used solely by the individual who has a severe speech impairment.

ii. May have digitized speech output, using pre-recorded messages, less than or equal to 8 minutes recording time.

iii. May have digitized speech output, using pre-recorded messages, greater than 8 minutes recording time.

iv. May have synthesized speech output, which requires message formulation by spelling and device access by physical contact with the device-direct selection techniques.

v. May have synthesized speech output, which permits multiple methods of message formulation and multiple methods of device access.

vi. May be software that allows a laptop computer, desktop computer or personal digital assistant (PDA) to function as a speech generating device.

b. Devices that would not meet the definition of speech generating devices and therefore, do not fall within the scope of § 1861(n) of the Act are characterized by:

i. Devices that are not dedicated speech devices, but are devices that are capable of running software for purposes other than for speech generation, e.g., devices that can also run a word processing package, an accounting program, or perform other non-medical function.

ii. Laptop computers, desktop computers, or PDAs, which may be programmed to perform the same function as a speech generating device, are non-covered since they are not primarily medical in nature and do not meet the definition of DME. For this reason, they cannot be considered speech generating devices for Amedicare coverage purposes.

iii. A device that is useful to someone without severe speech impairment is not considered a speech generating device for Medicare coverage purposes.

c. Indications and Limitations of Coverage

i. Effective January 1, 2001, augmentative and alternative communication devices or communicators, which are hereafter referred to as "speech generating devices" are now considered to fall within the DME benefit category established by § 1861(n) of the Act. They may be covered

> if the contractor's medical staff determines that the patient suffers from a severe speech impairment and that the medical condition warrants the use of a device based on the definitions above.

Conclusions of Law

1. Since: 1) Pub. Util. Code § 2881(f) does not require the Commission to provide training for SGD users; 2) Pub. Util. Code § 2881 does not mention provision of repair or replacement of an SGD received through this program; and 3) most SGD users have access to other and better sources of training, repair, and replacement, the Commission rejects DRA's recommendation that Draft Rule 5 also provide for the training of SGD users and their caregivers, as well as repair and replacement of the SGD.

2. Since the Commission adopts separate rules herein regarding the distribution of HHS-defined SGDs and a distribution program for Supplemental Telecommunications Equipment pursuant to the balance of Pub. Util. Code §2881, no revision to the SGD Rules is necessary to clarify the applicability of the rules with regards to HHS-defined SGDs only, as recommended by DRA and CforAT.

3. Since Pub. Util. Code § 2881(d) specifically identifies a "qualified state or federal agency" as one of the entities that shall provide such service, the Commission rejects Coggiola's proposal to remove "agency" from Draft Rule 1.

4. Since access to the internet was not identified as an issue in the OIR, it is outside the scope of the current proceeding therefore the Commission does not require, as requested by Coggiola, or prohibit access to the Internet through an HHS-defined SGD.

5. Since "software" falls under the term "accessories," the Commission rejects the addition of the term "software as requested by Coggiola.

6. Even though Pub. Util. Code § 2881 does not address an exemption from the rules adopted herein for a terminally ill SGD user who would not have the time to go through the application process, the Commission should develop some form of an exemption that would assist those in need. Therefore, the Commission should explore options regarding development of an exemption or an expedited application process for instances where this is needed or desirable, in the second phase of this proceeding.

7. Since Pub. Util. Code § 2881(e) specifically refers to the HHS definition of SGDs and not the Medi-Cal definition, the Commission rejects ATLC's request to use the Medi-Cal SGD definition.

8. Since the broader language of Draft Rule 7 provides more options for the administrator to address whatever eventualities regarding insurance recovery arise, the Commission does not revise Draft Rule 7 to include different types of reimbursement depending on whether the SGD user receives prior authorization for funding but no funding up front, versus payment by the SGD user with claims reimbursement from the SGD user's insurance provider.

9. Since Pub. Util. Code § 2881(e)(2) requires that the SGD user provide the requested documentation, the Commission rejects ATLC's recommendation to require that documentation be provided by the manufacturer instead of the SGD user.

10. Since SLP is the term of art typically used to identify a Speech Language Pathologist, the Commission uses the term SLP in the rules adopted herein.

11. Since the final SGD Rules (*see* Attachment A to this decision) provide sufficient guidance to begin the participation and administration of the SGD distribution program pursuant to AB 136 and Pub.Util. Code § 2881(d), are in compliance with the operative legislation, and provide speech-disabled persons

with the flexibility of access to whichever SGD is recommended by the SLP, these final SGD Rules should be adopted and added to the rules, guidelines and procedures already in place for the DDTP.

12. Since the Supplemental Telecommunications Equipment Rules (*see* Attachment B to this decision) expand options, provide alternatives, and serve as a substitute for the SGDs contemplated by § 2881(d), these Supplemental Telecommunications Equipment Rules should be adopted and added to the rules, guidelines and procedures already in place for the DDTP.

13. Upon issuance of this decision, CD staff should implement the SGD Rules and Supplemental Telecommunications Equipment Rules adopted herein.

14. More detailed instructions regarding administration of the SGD and Supplemental Telecommunications Equipment distribution programs should be addressed in a second phase of this proceeding.

15. The second phase of this proceeding should consider whether the Commission staff should request guidance from SLPs and other experts regarding equipment and applications provided by the SGD distribution program.

16. The Commission should require the assigned ALJ to request input regarding issues to be addressed in the second phase of this proceeding from parties to this proceeding within 30 days of the issuance of this decision.

17. Given a variety of concerns voiced by parties regarding the level of funding pursuant to Pub. Util. Code § 2881 and the two sets of rules adopted herein, and to provide the parties and the Commission an opportunity to assess the current level of funding available, the Commission should require that, no later than July 31, 2014, CD staff shall serve a brief report in this proceeding regarding: 1) how much money was spent during the first six months of the

SGD distribution program and the Supplemental Telecommunications Equipment program; and 2) whether an adjustment to the current DDTP surcharge is necessary; 3) should there be a cap on the amount spent on DME SGDs and Supplemental Telecommunications Equipment (by each piece of equipment and by user); and 4) if a cap should be in place, what should that amount be.

18. Within 30 days of the date of this decision, the assigned ALJ should request further guidance from parties regarding the following finance issues that may become a concern before the program has been in place for six months: 1) develop guidelines for CD staff to follow where funding from other sources has been denied and the Commission may be responsible for full funding of SGDs.

19. All rulings issued by the assigned Commissioner and ALJ should be affirmed herein; and all motions not specifically addressed herein or previously addressed by the assigned Commissioner or ALJ should be denied.

O R D E R

IT IS ORDERED that:

1. The Speech Generating Device Rules attached to this decision (Attachment A) are adopted and added to the rules, guidelines, and procedures already in place for the Deaf and Disabled Telecommunications Program. These Speech Generating Device Rules shall govern the distribution of Speech Generating Devices pursuant to Assembly Bill 136 (Ch. 404, Stats. 2011) and the associated sections of Public Utilities Code Section 2881.

2. The Supplemental Telecommunications Equipment Rules set out in Attachment B to this decision, are adopted and added to the rules, guidelines and

procedures already in place for the Deaf and Disabled Telecommunications Program. These Supplemental Telecommunications Equipment Rules shall govern the trial distribution of supplemental telecommunications equipment pursuant to the portions of Public Utilities Code Section 2881 not addressed by Assembly Bill 136.

3. The Commission shall explore options regarding development of an exemption or an expedited application process for instances where this is needed or desirable, in the second phase of this proceeding.

4. The Commission requires that the Communications Division, working with others as required, develop rules governing the administration of the Speech Generating Device and Supplemental Telecommunications Equipment distribution programs.

5. Upon issuance of this decision, the Commission's Communications Division staff shall implement the Speech Generating Device Rules and Supplemental Telecommunications Equipment Rules adopted herein.

6. More detailed instructions regarding administration of the Speech Generating Device and Supplemental Telecommunications Equipment distribution programs shall be addressed in a second phase of this proceeding.

7. The second phase of this proceeding shall consider whether the Commission Program should request guidance from speech language pathologists and other experts regarding equipment and applications provided by the Speech Generating Device distribution program.

8. The Commission requires the assigned Administrative Law Judge to request input regarding issues to be addressed in the second phase of this proceeding from parties to this proceeding within 30 days of the issuance of this decision.

9. Within 30 days of the date of this decision, the assigned Administrative Law Judge shall request further guidance from parties regarding the following finance issues that may become a concern before the program has been in place for six months: 1) develop guidelines for the Commission's Communications Division (CD) staff to follow where funding from other sources has been denied and the Commission may be responsible for full funding of Speech Generating Devices.

10. No later than July 31, 2014, the Commission's Communications Division staff shall serve a brief report in this proceeding regarding: 1) how much money was spent during the first six months of the Speech Generating Device (SGD) distribution program and the Supplemental Telecommunications Equipment program; 2) whether an adjustment to the current Deaf and Disabled Telecommunications Program surcharge is necessary; 3) should there be a cap on the amount spent on durable medical equipment SGDs and Supplemental Telecommunications Equipment (by each piece of equipment and by user); and 4) if a cap should be in place, what should that amount be. The assigned Administrative Law Judge shall then request that parties comment on such information as part of the second phase of this proceeding.

11. All rulings issued by the assigned Commissioner and Administrative Law Judge (ALJ) are affirmed herein; and all motions not specifically addressed herein or previously addressed by the assigned Commissioner or ALJ are denied.

12. Rulemaking 13-03-008 remains open.

This order is effective today.

Dated December 19, 2013, at San Francisco, California.

MICHAEL R. PEEVEY
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
CARLA J. PETERMAN
Commissioners

Attachment A

Speech Generating Device Rules

Preamble

On October 2, 2011, Governor Edmund G. Brown, Jr. signed into law Assembly Bill (AB) 136 (Beall, Statutes 2011, Chapter 404, effective January 1, 2012). This legislation amended Public Utilities (Pub. Util.) Code § 2881, as it relates to telecommunications. Per AB 136, the Commission must adopt rules to implement the SGD program by January 1, 2014. As amended, Pub. Util. Code § 2881 modifies the Deaf and Disabled Telecommunications Program (DDTP) as follows:

a. Addition of Speech Language Pathologists (SLP) to the list of agents that can certify individuals as being eligible to receive equipment from the DDTP;
b. Expands the DDTP to individuals with speech disabilities for the provision of Speech Generating Devices (SGD), accessories, mounting systems, and specialized telecommunications equipment; and
c. Expands the list of equipment provided by the DDTP to include SGD which, due to their medical nature, were previously outside the scope of the type of telecommunications equipment provided by the DDTP.

The DDTP offers assistive telecommunications services and equipment to California residents who are certified as having a hearing, speech, mobility, vision, or cognitive disability. The Commission established a program to provide specialized equipment to persons who are deaf and hard of hearing through Commission decisions issued during the 1980's. Subsequently, the Legislature codified the program through enactment of several provisions in Pub. Util. Code §2881 et seq. To implement these legislative mandates, the Commission

created the DDTP and its advisory committees. The legislative mandates governing the DDTP currently include:

a. Pub. Util. Code § 2881(a) addresses the provision of Teletypewriters (TTYs) to deaf or hard-of-hearing individuals.
b. Pub. Util. Code § 2881(b) addresses third-party intervention, also known as the CRS, to connect telephone consumers who are deaf, hard-of-hearing, or speech-impaired with other parties.
c. Pub. Util. Code § 2881(c) addresses the provision of other specialized telecommunications equipment to consumers with hearing, vision, mobility, speech, or cognitive disabilities.

The current DDTP is funded via a surcharge assessed on revenues collected from end-users for all intrastate telecommunications services in California. Pursuant to Senate Bill (SB) 669 (1999) and AB 1734 (2002), the DDTP Committee Fund, was created to hold these surcharge funds. Prior to enactment of AB 136, § 2881(d) required that the DDTP provide specialized telecommunications equipment such as amplified phones, speakerphones, and TTYs to consumers with hearing, vision, mobility, speech or cognitive disabilities. This equipment is provided through the DDTP's CTAP. A dual-party relay system, now called the CRS, connects TTY users with any other telephone user.

Pursuant to D.13-12-054 in R.13-03-008, the Commission adopted a revised SGD Rule which is added to the rules governing DDTP.

Speech Generating Device Rules

The order of these rules has no bearing on their applicability. All rules herein must be taken as a whole and in reference to each other.

For purposes of these rules, a Speech Generating Device (SGD) is defined pursuant to the most current definition of an SGD by the United States Department of Health and Human Services.

1. Access to a speech generating device (SGD) and/or associated equipment detailed in Rules 4 and 5 below shall be provided to a subscriber who is certified as having a speech disability. Access to the telecommunications network shall be provided at no charge additional to the basic exchange rate. This certification shall be provided by a licensed physician, licensed speech-language pathologist (SLP), or qualified state or federal agency.
2. The California Public Utilities Commission's (Commission), as part of its Deaf and Disabled Telecommunications Program (DDTP), shall manage the SGD Distribution Program (DDTP SGD Program), including the distribution of SGD associated equipment as detailed in Rule 5 below.
3. All references to certified subscriber herein refer to such as detailed in Rule 1.
4. A certified subscriber shall be provided access to an SGD that:
    a. Is a telecommunications device or a device that includes a telecommunications component;
    b. Meets the subscriber's needs for access to and use of the telephone network;
    c. Is consistent with the quality of SGDs available for purchase in California; and
    d. Is based on the recommendation of an SLP.
5. A certified subscriber shall be provided access to SGD associated equipment that is recommended by an SLP, including the following equipment:
    a. Accessories;
    b. Mounting systems; and
    c. Specialized telecommunications equipment, including infrared telephones, speaker phones, and telephone interface devices.
6. The Commission is the payer of last resort for SGDs and SGD associated equipment.

7. Certified eligible subscribers must first obtain and/or investigate coverage for payment of an SLP recommended SGD and/or SGD associated equipment from all available public and private insurance.
8. All funds the Commission provides for purchase of an SLP recommended SGD and/or SGD associated equipment shall be made to the manufacturer, vendor, or other entity the Commission designates. The following rules also govern funding by the Commission:
    a. No payments shall be made directly to a certified subscriber.
    b. The certified subscriber shall provide documentation to the California Public Utilities Commission of all other funding sources (public and private insurance) that she/he is eligible for and receives for the cost of an SLP recommended SGD and/or SGD associated equipment, including but not limited to: 1) the SGD that is available from her/his public or private insurance; and 2) the cost to the certified subscriber of any deductible, copayment, or benefit cap.
    c. The total cost of an SLP recommended SGD and/or SGD associated equipment, for a certified subscriber shall not exceed the most current rate of reimbursement provided by Medi-Cal for the recommended SGD and/or SGD associated equipment.
9. If, in the future, the current DDTP surcharge is not sufficient to support the DDTP SGD Program as well as its other programs, the Commission shall determine whether the DDTP surcharge should be revised to account for DDTP SGD Program costs.

Definition of Durable Medical Equipment Speech Generating Device
http://cms.hhs.gov/medicare-coverage-database/details/ncd-details.aspx?NCDId=274&ncdver=1&bc=AgAAQAAAAAAAAA%3D%3D&

Durable Medical Equipment

Note: This may not be an exhaustive list of all applicable Medicare benefit categories for this item or service.

Item/Service Description

Speech generating devices are defined as speech aids that provide an individual who has a severe speech impairment with the ability to meet his functional speaking needs. Speech generating are characterized by:

- Being a dedicated speech device, used solely by the individual who has a severe speech impairment.
- May have digitized speech output, using pre-recorded messages, less than or equal to 8 minutes recording time.
- May have digitized speech output, using pre-recorded messages, greater than 8 minutes recording time.
- May have synthesized speech output, which requires message formulation by spelling and device access by physical contact with the device-direct selection techniques.
- May have synthesized speech output, which permits multiple methods of message formulation and multiple methods of device access.
- May be software that allows a laptop computer, desktop computer or personal digital assistant (PDA) to function as a speech generating device.

Devices that would not meet the definition of speech generating devices and therefore, do not fall within the scope of §1861(n) of the Act are characterized by:

- Devices that are not dedicated speech devices, but are devices that are capable of running software for purposes other than for speech generation, e.g., devices that can also run a word processing package, an accounting program, or perform other non-medical function.
- Laptop computers, desktop computers, or PDAs, which may be programmed to perform the same function as a speech generating device, are non-covered since they are not primarily medical in nature and do not meet the definition of DME. For this reason, they cannot be considered speech generating devices for Amedicare coverage purposes.
- A device that is useful to someone without severe speech impairment is not considered a speech generating device for Medicare coverage purposes.

Indications and Limitations of Coverage

Effective January 1, 2001, augmentative and alternative communication devices or communicators, which are hereafter referred to as "speech generating devices"

are now considered to fall within the DME benefit category established by §1861(n) of the Act. They may be covered if the contractor's medical staff determines that the patient suffers from a severe speech impairment and that the medical condition warrants the use of a device based on the definitions above.

(End of Attachment A)

Attachment B

Supplemental Telecommunications Equipment Rules

1. Supplemental telecommunications equipment (such as tablets or other assistive devices that assist the subscriber in accessing or using the telecommunications network) shall be provided to subscribers who are certified to be disabled at no charge additional to the basic exchange rate.
2. The certification, including a statement of medical need for specialized telecommunications equipment, shall be provided by an SLP, licensed optometrist, physician and surgeon, or physician assistant, acting within the scope of practice of his or her license, or by a qualified state or federal agency.

(End of Attachment B)

Attachment C

Draft Speech Generating Device Rules

1. Access to a speech generating device (SGD) and/or associated equipment detailed in Rules 4 and 5 below shall be provided to a subscriber who is certified as having a speech disability, at no charge additional to the basic exchange rate. This certification shall be provided by a licensed physician, licensed speech-language pathologist (LSLP), or qualified state or federal agency.

2. The California Public Utilities Commission's (Commission), as part of its Deaf and Disabled Telecommunications Program (DDTP), shall manage the SGD Distribution Program (DDTP SGD Program), including the distribution of SGD associated equipment as detailed in Rule 5 below.

3. All references to certified subscriber herein refer to such as detailed in Rule 1.

4. A certified subscriber shall be provided access to an SGD that:
    a. Is a telecommunications device or a device that includes a telecommunications component;
    b. Meets the subscriber's needs for access to and use of the telephone network;
    c. Is consistent with the quality of SGDs available for purchase in California; and
    d. Is based on the recommendation of an LSLP.

5. A certified subscriber shall be provided access to SGD associated equipment that is recommended by an LSLP, including the following equipment:
    a. Accessories;
    b. Mounting systems; and
    c. Specialized telecommunications equipment, including infrared telephones, speaker phones, and telephone interface devices.

6. The Commission is the payer of last resort for SGDs and SGD associated equipment.

7. Certified eligible subscribers must first obtain and/or investigate coverage for payment of an LSLP recommended SGD and/or SGD associated equipment from all available public and private insurance.
8. All funds the Commission provides for purchase of an LSLP recommended SGD and/or SGD associated equipment shall be made to the manufacturer, vendor, or other entity the Commission designates. The following rules also govern funding by the Commission:
    a. No payments shall be made directly to a certified subscriber.
    b. The certified subscriber shall provide documentation of all other funding sources (public and private insurance) that she/he is eligible for and receives for the cost of an LSLP recommended SGD and/or SGD associated equipment to the California Public Utilities Commission, including but not limited to: 1) the SGD that is available from her/his public or private insurance; and 2) the cost to the certified subscriber of any deductible, copayment, or benefit cap.
    c. The total cost of an LSLP recommended SGD and/or SGD associated equipment, for a certified subscriber shall not exceed the most current rate of reimbursement provided by Medi-Cal for the recommended SGD and/or SGD associated equipment.
9. If, in the future, the current DDTP surcharge is not sufficient to support the DDTP SGD Program as well as its other programs, the Commission shall determine whether the DDTP surcharge should be revised to account for DDTP SGD Program costs.

(End of Attachment C)