

## **SGD Medicare Developments: August 2015: Frequently Asked Questions**

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### **1) What Happened in July?**

There were two significant developments in July 2015 related to Medicare coverage and payment for speech generating devices:

- the Centers for Medicare & Medicaid Services (CMS) issued a final revised National Coverage Determination for SGDs on July 29; and
- the Steve Gleason Act was signed by the President on July 30.

### **2) Are the NCD and Gleason Act effective immediately?**

2015 NCD: Not clear. When CMS released the 2015 NCD for SGDs, it did not state an effective date for new guidance. Some believe it is effective immediately. A definitive response from CMS will be sought in August.

Gleason Act: No. It contains two provisions, each with a distinct effective date. One section applies to SGD payment. It ends Medicare payment for SGDs as “capped rental” DME items. It becomes effective on October 1, 2015. The second provision changes the Medicare definition of durable medical equipment. It will now include the following additional text: “*eye tracking and gaze interaction accessories for speech generating devices furnished to individuals with a demonstrated medical need for such accessories.*” This change will be effective for devices furnished on or after January 1, 2016.

### **3) What does the 2015 NCD mean for Medicare beneficiaries?**

Most significantly, the 2015 NCD states the scope of Medicare SGD coverage that will continue into the future. That scope of coverage will include four key elements:

- hardware: Medicare stated its intent in the 2015 NCD was to “expand the types and features of [SGDs]” that Medicare will cover. Its text supports Medicare coverage and reimbursement for both purpose-built and off-the-shelf computer-based SGDs. However, certain conditions must be satisfied. SGDs must be more than a tablet + an AAC/SGD software application. CMS is clear: “computers and tablets in general” will not be covered. Instead, coverage will be offered to “computers that are modified to generate speech can be considered SGDs if the device is used primarily by a patient with severe speech impairment for the primary purpose of generating speech;” and to devices “limited to use by a patient with a severe speech impairment and is primarily used for the purpose of generating speech.” The SGD manufacturers will be responsible to ensure their products meet CMS’ expectations. This scope of coverage should include all of the devices that had been covered by Medicare to date. Also, independent of the NCD revision, all DME items must be obtained from sources of supply that meet specific Medicare requirements. Consumer electronics or department stores and on-line retailers are unlikely to qualify as sources of devices eligible for Medicare reimbursement. ;

- all devices are required to generate speech but also will be allowed to have other capabilities, including environmental control, phone control, and general computer features;
- Medicare beneficiaries will be able to access SGDs' other capabilities at their option, and at their own expense; and
- AAC/SGD software will be covered to enable Medicare beneficiaries to use their own computers as their SGDs.

**4) What will be the effect of the 2015 NCD's reference to texting, e-mail and phone communication as *allowed, standard SGD features*?**

The 2015 NCD re-defines "speech" to include "remote communication" capabilities such as texting, e-mail and phone communication. It also states that these can be standard features on SGDs for Medicare coverage purposes.

This statement in the 2015 NCD will not affect SGD functionality. These features have been available on SGDs for many years, as options. They have been accessible based on "unlocking" at client request and at nominal client expense. Any Medicare beneficiary who wanted to take advantage of these non-speech generating capabilities was able to do so. The 2015 NCD makes clear Medicare beneficiaries who want to use any of these capabilities can do so.

The only change made by the 2015 NCD is that SGDs can have these capabilities as standard features. Whether they are an option or a standard feature is not a substantive difference. What is important is that these capabilities will continue to be available.

**5) Do SGDs still have to be "dedicated?" What will be the effect of the 2015 NCD's reference to "dedicated" devices *not* being necessary for Medicare coverage?**

The 2015 NCD states:

*As long as the speech-generating device is limited to use by a patient with a severe speech impairment and is primarily used for the purpose of generating speech, it is not necessary for a speech-generating device to be dedicated only to speech generation to be considered DME.*

Based on this statement in the 2015 NCD, it is reasonable to conclude SGDs do not have to be "dedicated" to qualify for Medicare coverage and reimbursement. However, the 2015 NCD imposes two conditions before dedication "is not necessary." It says an SGD will be covered "[a]s long as the [SGD] is limited to use by a patient with a severe speech impairment and is primarily used for the purpose of generating speech."

It is not clear *how* SGDs will be able to meet these two conditions absent dedication. It also is not clear the SGD manufacturers will direct any effort to find alternatives. Almost all other SGD funding programs still have either expectations or requirements that SGDs will be dedicated. None of these other funding programs has to adopt the 2015 NCD, and even if they elect to do so, those decisions may be made months or years from now. Trying to take advantage of this

statement in the 2015 NCD may create substantive differences between SGD funding programs that may create risks of SGD denials – risks that will be completely preventable simply by continuing to provide dedicated devices.

Also to be considered is that continuing to provide dedicated devices will have no adverse effect on beneficiaries. The 2015 NCD very clearly states SGDs are allowed to have additional capabilities and that these additional capabilities will be accessible upon beneficiaries' request at the time of device delivery.

#### **6) What does the Gleason Act mean for Medicare beneficiaries?**

The Gleason Act will end “capped rental” effective October 1, 2015 for a period of three years. SGDs delivered after that date will become the client’s property immediately, and there will be no risk of device loss based on the need for long-term hospitalization, nursing facility or hospice care.

It is unknown at present whether CMS will also apply the Gleason Act to SGDs currently in the capped rental period. If this is allowed, these SGDs will become the Medicare beneficiaries’ property immediately, ending the risk of device loss based on the need for long-term hospitalization, nursing facility or hospice care. If this is not allowed, these SGDs will have to continue as capped rental devices for the full 13 month capped rental period.

The Gleason Act’s second provision, related to eye tracking accessories does not become effective until January 1, 2016. To date, the Medicare policy change in late 2013 to refuse to cover and to deny eye tracking accessories *payment claims* has not had any adverse effect on beneficiaries. When recommended, they have been provided. It is hoped the Gleason Act will cause this Medicare policy to change but its actual effect, if any, will have to await further notice from Medicare.

#### **7) Does the Gleason Act or the 2015 NCD change the SLP assessment process for SGDs?**

No. Neither the Gleason Act nor the 2015 NCD requires any change to the SLP tasks related to Medicare SGD assessment or report writing.

The focus of the Gleason Act is capped rental payment and coverage of eye tracking accessories. Neither requires any change to SLP evaluation or reporting.

The 2015 NCD addresses the scope of SGD coverage. It confirms that the scope of Medicare SGD coverage will be the same as what existed after 2001. Thus, the evaluation procedures and report writing requirements for Medicare SGD coverage developed after 2001 should continue to be used.

- The SLP evaluation and report required by the Medicare Local Coverage Decisions for SGDs should continue to be followed.
- The outlines, templates and report writing aids developed to help SLPs conduct complete evaluations and prepare complete reports consistent with the LCDs for SGDs should continue to be used. (These can be found at <http://aac->

[rerc.psu.edu/index.php/pages/show/id/5](http://rerc.psu.edu/index.php/pages/show/id/5); and a [www.aacfundinghelp.com](http://www.aacfundinghelp.com) (AAC report coach) and at the web pages for the SGD manufacturers.)

- SLPs should continue to identify Medicare beneficiaries' need for an SGD based on their inability to meet their daily speaking needs using oral speech or other natural communication methods.
- SLPs should continue to report only the client's need for oral speech.
- SLPs should *never* include in their reports that Medicare beneficiaries need or intend to use the SGD for any purposes other than as a supplement or substitute for speaking.
- SLPs should *never* include in their reports that Medicare beneficiaries will seek to access any of the non-speech generating capabilities of the SGD.
- SLPs should continue to identify in their recommendations the *dedicated* model of the SGD most appropriate to meet Medicare beneficiaries' needs.

#### **8) Can't SLPs reference the elements of the expanded definition of "speech" in the 2015 NCD?**

The 2015 NCD re-defines the concept of "speech" to include "remote communication" capabilities such as texting, e-mail and phone communication. It also states that these are allowed, standard features of SGDs for Medicare coverage purposes. Thus, SLPs clearly will be *allowed* to include references to "remote communication" need or intent in their reports without risk of adverse Medicare funding effect.

Nonetheless, it is recommended that SLPs *not* take advantage of this opportunity and to continue to write their reports based on the historic definition of "speech," i.e., to support face-to-face communication interactions. SLPs may wish to use a standard protocol for their SGD evaluations and reports but it is essential that all SLPs recognize that as of today, this re-definition of "speech" applies only to Medicare. No other funding program has yet adopted the 2015 NCD and its re-definition of "speech," or ever has to do so. To the contrary, almost all other funding programs expect or require SLP reports and recommendations to establish clients require a dedicated SGD to meet their need to communicate in face-to-face interaction. If SLPs do not write their reports consistent with funding program expectations, there will be a denial. Nothing prevents SLPs from having different templates for "Medicare" reports and other funding programs, but there is no requirement that they do so. Also, SLPs must be alert to the possibility – of which they may not be aware – that clients have dual eligibility between Medicare and Medicaid or insurance. Failing to report based on the narrowest approval criteria is an invitation to a denial.

#### **9) Must other funding sources follow the 2015 NCD? Will they do so?**

No. No other funding source is required to follow Medicare's SGD coverage criteria.

However, in the period since Medicare issued its 2001 NCD, most Medicaid programs, insurers and Tricare copied the Medicare guidelines in whole or part for their own use. This clearly was voluntary on their part.

Medicare has now issued a revised NCD for SGDs but none of these other funding programs is required to adopt the revisions.

It is not possible to predict whether or when any other funding program will conform their SGD coverage to the 2015 NCD.

**10) If the Gleason Act’s “capped rental” provision has an October 1, 2015 effective date, what does this mean for Medicare funding requests that currently are pending?**

There are roughly 8 weeks until capped rental will no longer be applied to new SGD deliveries. It is possible that devices acquired between now and October 1 will be subject to capped rental for the full 13 months period. We simply do not know at present whether CMS will end capped rental for existing devices or only apply the Gleason Act provision prospectively, for devices delivered after October 1.

This uncertainty weighs most heavily on Medicare beneficiaries with currently pending Medicare SGD funding requests. They have several options to consider:

- Clients can ask that their paperwork be set aside so that no SGD delivery will occur prior to October 1;
- Clients may try to access a loan closet for a device for this interim period;
- Clients can ask if the SGD manufacturer will loan a device for the period up to October 1 rather than have a Medicare-funded device be delivered during this period (AbleNet has stated it will do this);
- Clients with the financial means to do so may seek to rent a device privately for this period, without Medicare funding; they may also seek a discounted rental rate from the SGD manufacturers to make this rental opportunity more affordable;

**11) Will the Gleason Act apply to SGDs now within the 13 month capped rental period?**

We don’t know. CMS has not yet said how it will interpret the Gleason Act in regard to SGDs currently in the capped rental period.

CMS may apply the Gleason Act prospectively only, meaning that it will apply only to SGDs delivered after October 1. If this occurs, SGDs currently in capped rental will have to continue as capped rental devices for the full 13 month capped rental period.

Or, CMS may apply the Gleason Act to SGDs currently in the capped rental period. If this is allowed, these SGDs will become the Medicare beneficiaries’ property immediately upon payment of the remaining co-payment amount, and this will end the risk of device loss based on the need for long-term hospitalization, nursing facility or hospice care.

**12) Will the 2015 NCD apply to SGDs currently in capped rental?**

The 2015 NCD re-defines “speech” to include “remote communication” such as e-mail, text and phone communication. It is possible this revision will go into effect immediately.

If so, will this change apply to existing capped rental devices?

One possibility is that these “standard features” of SGDs can be made available on existing capped rental devices. In other words, SGDs currently in capped rental may not have to remain “dedicated” for the entire 13 month period, but instead may be able to be “unlocked” to provide access to e-mail, text and phone communication.

Confirmation from CMS will likely to be required before this opportunity is actually offered.

### **13) What are ABNs?**

The 2015 NCD refers to a Medicare form known as an ABN. ABN stands for “advanced beneficiary notice.” ABNs are communications between the supplier – SGD manufacturer – and the “*beneficiary*.” ABNs provide “*notice*” to Medicare beneficiaries of things Medicare will not pay for. Their intent is to allow beneficiaries to make informed choices about what items they want to have supplied: do they want only the basic item that Medicare will reimburse, or do they want the additional items that Medicare will not pay for and that the beneficiary may be asked to pay for directly? The “*advanced*” aspect of an ABN means the notice must be provide *before* the device is shipped.

Stated most simply, ABNs ask: “*do you want this?*” *i.e.*, some SGD capability or feature that Medicare will not pay for?”

The 2015 NCD also says the SGD manufacturers can offer “similar notice” instead of an ABN, but what will be acceptable “similar notice” is unknown at this time.

In the 2015 NCD and the decision memorandum that accompanied it, CMS identified a number of SGD capabilities and features that SGDs can have, but that Medicare will not pay for. These include:

- specific features of an [SGD] that are not used by the individual who has a severe speech impairment to meet his or her functional speaking needs
- computing hardware or software not necessary to allow for generation of audible/verbal speech, email, text or phone messages
- computer hardware or software used to create documents and spreadsheets or play games or music
- computer hardware or software related to video communications or conferencing
- environmental control
- general internet access

The 2015 NCD plainly supports SGDs having these capabilities and identifies the established Medicare ABN procedure for beneficiaries to be able to access them.

Based on the capabilities and features CMS identified, it is reasonable to anticipate two distinct ABNs will be provided to beneficiaries: one will identify the SGD capabilities and features that will be provided at beneficiaries’ request and at a nominal charge. All the features associated with unlocking and environmental control will likely fall within this category.

The second ABN will identify the SGD capabilities and features that will be provided on all devices, and without charge. For example, it is likely the SGD manufacturers will not be able to remove or easily disable the user-facing camera. Thus, this feature will be provided notwithstanding Medicare's clear statement that it will not pay for it. To be safe, the SGD manufacturers will likely provide all Medicare beneficiaries with an ABN acknowledging Medicare's position and stating that the user facing camera and video-communication capability will be provided at no-cost.

The 2015 NCD also references two things that are not SGD capabilities or features that Medicare will not pay for:

- internet or phone service
- modifications to a patient's home

It is likely nothing will be said or done with regard to "internet or phone service" or "home modifications." These are not SGD capabilities or features and Medicare never was asked to pay for these things.

#### **14) What internet capability will Medicare allow SGDs to provide?**

Medicare will ***not*** pay for Medicare beneficiaries' charges to have access to an internet service provider. This is not a change in policy: Medicare has never paid these charges and it is unlikely Medicare ever was asked to do so.

Instead, "internet capability" and "internet access" are SGD hardware and software issues. The 2015 NCD does not provide a clear answer as to how SGDs can provide internet access. On one hand, it accepts that SGD manufacturers should be able to communicate with devices to provide software updates and technical support. This communication will occur through the internet. It also states that email communication can be a standard SGD feature. Internet access is required to send and receive e-mail. On the other hand, the 2015 NCD states that general internet access is not covered. The decision memorandum accompanying the 2015 NCD CMS stated: "[Internet] [c]overage is limited to whatever capability is necessary to generate emails, which may include access to the internet for the purpose of sending email messages, but access to the internet in general is not a covered feature of an SGD."

The SGD manufacturers will have to determine how they will address e-mail as an SGD capability or feature. Perhaps the easiest way to do so is to offer *full* internet access but to do so by ABN, *i.e.*, to declare: (a) beneficiaries can have full internet access, which will allow them to have free choice of e-mail providers; (b) but Medicare will not pay for full internet access. It will be the manufacturers' choice whether to offer this access as a free feature (at no charge to beneficiaries) or as one that will be available upon beneficiary request and upon payment of a nominal additional charge.

#### **15) How will I find out whether issues still unclear or unresolved have been settled?**

As decisions are made by CMS or the SGD manufacturers and additional information becomes available, we will continue to provide updates and will post them at

[www.patientprovidercommunication.org](http://www.patientprovidercommunication.org), at [www.ussaac.org](http://www.ussaac.org), and add them to the DAAC list serv.