

MLPP Focuses on Medical Necessity Denials under Medicaid/HUSKY for PT, OT and Speech and Language Services

By Jay Sicklick, MLPP Director

When are children entitled to medically necessary physical, occupational and speech/language services under the state's Medicaid/HUSKY plans?



If a child insured through the state's HUSKY Plan receives speech & language services in school, can they access additional services through independent therapeutic providers that will be reimbursed by the Managed Care Medicaid (MCO) insurers? These are recent questions that the MLPP has addressed – and this month, the MLPP News addresses some of these difficult, yet important questions.

Are therapies (PT, OT, Speech/Language) covered under the State's Medicaid/HUSKY plans?

The simple answer is YES – all of these therapeutic services are covered under either the HUSKY Plan Part A (HUSKY A) or through a Medicaid waiver plan (Title XIX – Katie Beckett waiver, e.g.). The standard for provision of these services is that the request must be “medically necessary” in light of the child's condition and need.

If the patient receives therapeutic services in school, is she still entitled to therapies outside of the classroom?

Yes. It is a common misconception that if a child receives speech and language services (or PT/OT services) in the school, she is ineligible to receive speech and language services in the community by a licensed provider. Speech/language, PT and OT services provided in the educational setting are known as “related services” under special education law. The federal regulations define these services as “... such developmental, corrective, and other supportive services as are required to assist a child with a disability to

benefit from special education ...” See 34 C.F.R. § 300.24. Note that the services must “assist a child” to benefit from special education services – and, generally speaking, school districts interpret this requirement very narrowly.

What is the standard for “medical necessity” that the MCOs, and the Department of Social Services (for Title XIX patients) use for evaluating “medical necessity?”

At present, the MCOs must follow the state and federal regulations when evaluating what constitutes “medically necessary” care and treatment for Medicaid patients. Remember that all pediatric patients (under 21 for Medicaid purposes) insured under the HUSKY A plans are Medicaid recipients, and thus care and treatment criteria are governed by Medicaid law.

“Medical necessity” and “medical appropriateness” are defined under state regulations, for the moment, as:

“Medical Necessity or Medically Necessary” means health care provided to correct or diminish the adverse effects of a medical condition or mental illness; to assist an individual in attaining or maintaining an optimal level of health; to diagnose a condition; or prevent a medical condition from occurring.

“Medical Appropriateness or Medically Appropriate” means health care that is provided in a timely manner and meets professionally recognized standards of acceptable medical care; is delivered in the appropriate medical setting; and, is the least costly of multiple, equally effective alternative treatments or diagnostic modalities.

Under federal Medicaid law, state Medicaid programs must cover “necessary health care, diagnostic services, treatment and other measures...to correct or ameliorate defects and physical and mental illnesses and conditions.” 42 U.S.C. § 1396d(r)(5). Services must be covered if they correct, compensate for, or improve a condition, or prevent a condition from worsening – even if the condition cannot be prevented or cured.

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Are patients allowed to receive these therapies outside of the home?

Yes. The Connecticut legislature passed bills in 2006 and 2007 that allow for reimbursement under the Medicaid program to children for physical therapy, occupational therapy and speech therapy services provided by a home health care agency, in the child's home or a substantially equivalent environment. For purposes of such reimbursement, a substantially equivalent environment may include, but not be limited to, facilities that provide child day care services. See Conn. Gen. Stat. § 17b-261g.

What should I do if my patient's request for therapeutic services is denied by the MCO or DSS?

You should do two things: First, call the medical director of the MCO or the DSS and ask for a review of the denial. This is an informal step – it may result in further scrutiny by the insurance provider (DSS or the MCO) but it does not preserve the patient's formal right to appeal the denial. If this informal advocacy does not work, inform the patient to request a fair hearing with DSS.



Remember that time is of the essence in this case. A patient with a denial has only 30 days to formally appeal a denial and request a fair hearing. The MLPP advises you to recommend that the family seek legal assistance at this point, such as the MLPP or another legal services/legal aid agency.

Where can I learn more about medical necessity determinations, access to therapeutic services, and the fair hearing process?

Contact the MLPP Project Director, Jay Sicklick, at jsicklick@kidscounsel.org, or MLPP senior staff attorney Bonnie Roswig, at broswig@ccmckids.org for further information about this topic or any issues surrounding EPSDT and Medicaid advocacy.

For a more in depth look at EPSDT, Medicaid issues, and medical necessity, the National Health Law Program offers excellent resources at www.healthlaw.org.

To refer a case to the MLPP

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More information about the Medical-Legal Partnership Project is available at www.kidscounsel.org.

MLPP is a joint medical-legal collaboration between the Center for Children's Advocacy, Connecticut Children's Medical Center, Charter Oak Health Center, Community Health Services, Saint Francis Hospital & Medical Center, and The Hospital of Central Connecticut.

MLPP's Pro Bono Attorney Cited by the American Bar Association

The following article appeared, in part, on the American Bar Association's Pro Bono and Public Service website, after original publication on Center for Children's Advocacy's MLPP website.

Patent Attorney Alison Mohr had recently moved to Connecticut and was looking for a volunteer opportunity when she learned about CCA's Medical Legal Partnership Project (MLPP). She has devoted extraordinary energy and resources to the Center's work. "She's committed to this work on an ongoing basis. She understands the issues and the medical and legal complications that poverty imposes on the families we serve," says Bonnie Roswig, Senior Staff Attorney for the MLPP.

Mohr has been volunteering with the Center since the fall of 2009, both with MLPP cases and at the weekly clinic at The Hospital of Central Connecticut in New Britain. She has been actively involved in the MLPP's "Keep the Power On" utility clinics which help low income families maintain service.

At a meeting last fall, Attorney Mohr overheard a hospital social worker lament that their annual toy drive was suffering because of the recession. "Ali was a bystander to this conversation," Roswig says. "Three days later she called to say, "We are raising smoney to buy holiday presents for the Center's kids." Starting with her neighbors, news of the gift drive spread and within a short period Mohr had secured \$1300 in donations. In addition, Beth Israel Synagogue in West Hartford heard about her efforts and dedicated the proceeds of their toy drive to CCA.

Mohr coordinated child-client "wish lists" and purchased many of the gifts, enlisting her children and husband to help wrap. She and her family "adopted" one of the families she met through her CCA work, providing them with household essentials.

Beyond this immediate help, Mohr's work and generosity have had an enormously positive effect on the Center's future. Her word-of-mouth campaign for toy drive donations introduced many new donors to CCA's work and the needs of Connecticut's most vulnerable children.

Project activities are funded through generous grants from:
NewAlliance Foundation
The Ensworth Charitable Foundation
The Fund for Greater Hartford
The Aetna Foundation
Greater Hartford Jaycees
The Jessie B. Cox Trust
Connecticut Health Foundation
Connecticut Bar Foundation
Hartford Foundation for Public Giving
Robert Wood Johnson Foundation