

When Medicaid for children was created in 1967, President Lyndon Johnson stated “The problem is to discover, as early as possible, the ills that handicap our children. There must be continuing follow-up and treatment so that handicaps do not go untreated.” (13 Congressional Record 2883. February 8, 1967).

The Medicaid law for children (the EPSDT statute: EPSDT stands for Early, Periodic, Screening, Diagnostic, and Treatment services), is found at 42 USC § 1396d(r).

It can be found on the internet at http://caselaw.findlaw.com/cascode/uscodes/42/chapters/7/subchapters/xix/sections/section_1396d.html When you get there and the page has finished loading, do a “find” (should be your command key and then the letter ‘F’) then enter the word “ameliorate defects” (without the quotation marks), and it will take you to the body of Paragraph 5 of the EPSDT statute. You can then back it up to get the first 4 paragraphs as well.

It reads:

(r) Early and periodic screening, diagnostic, and treatment services
The term “early and periodic screening, diagnostic, and treatment services” (EPSDT) means the following items and services:

(1) SCREENING SERVICES -

(A) which are provided -

(i) at intervals which meet reasonable standards of medical and dental practice, as determined by the state after consultation with recognized medical and dental organizations involved in child health care and, with respect to immunizations under subparagraph (B)(iii), in accordance with the schedule referred to in section 1396s(c)(2)(B)(i) of this title for pediatric vaccines, and

(ii) at such other intervals, indicated AS MEDICALLY NECESSARY, to determine the existence of certain physical or mental illnesses or conditions; and

(B) which shall at a minimum include -

(i) a comprehensive health and developmental history (including assessment of both physical and mental health development),

(ii) a comprehensive unclothed physical exam, (iii) appropriate immunizations (according to the schedule referred to in section 1396s(c)(2)(B)(i) of this title for pediatric vaccines) according to age and health history, (iv) laboratory tests

(including lead blood level assessment appropriate for age and risk factors), and (v) health education (including anticipatory guidance).

(2) VISION SERVICES -

(A) which are provided -

(i) at intervals which meet reasonable standards of medical practice, as determined by the state after consultation with recognized medical organizations involved in child health care, and

(ii) at such other intervals, indicated AS MEDICALLY NECESSARY, to determine the existence of a suspected illness or condition; and

(B) which shall at a minimum include diagnosis and treatment for defects in vision, including eyeglasses.

(3) DENTAL SERVICES -

(A) which are provided -

(i) at intervals which meet reasonable standards of dental practice, as determined by the state after consultation with recognized dental organizations involved in child health care, and

(ii) at such other intervals, indicated AS MEDICALLY NECESSARY, to determine the existence of a suspected illness or condition; and

(B) which shall at a minimum include relief of pain and infections, restoration of teeth, and maintenance of dental health.

(4) HEARING SERVICES -

(A) which are provided -

(i) at intervals which meet reasonable standards of medical practice, as determined by the State after consultation with recognized medical organizations involved in child health care, and

(ii) at such other intervals, indicated AS MEDICALLY NECESSARY, to determine the existence of a suspected illness or condition; and

(B) which shall at a minimum include diagnosis and treatment for defects in hearing, including hearing aids.

(5) Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan.

Paragraph 5 is the part you're most interested in for Hyperbaric Oxygen Therapy.

Many brain-injured children are Medicaid recipients, and according to Title XIX of the Social Security Act, as described in 42 U.S.C. §1396(a)(43), Medicaid-participating states must provide to eligible minors under the age of 21 certain mandatory medical services--including Early and Periodic Screening, Diagnostic, and Treatment Services [EPSDT].

Also, in paragraph (5) of the EPSDT statute found in 1396d(r), is a requirement that States provide "such other necessary health care, ...treatment and other measures...to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan."

Paragraph 5 became Federal law in 1990 to make up for lost time. Also, it was created specifically so that brain-injured children could get extra oxygen. Again, it reads "(5) Such other necessary health care, diagnostic services, treatment, and other measures to correct or ameliorate defects and physical and mental illnesses

and conditions discovered by the screening services, whether or not such services are covered under the State plan.”

IF YOU LOOK CAREFULLY YOU’LL SEE THAT THE PHRASE “MEDICALLY NECESSARY” IS NO WHERE TO BE FOUND IN PARAGRAPH 5--EVEN THOUGH THE PHRASE IS PRESENT IN EACH OF THE PREVIOUS FOUR PARAGRAPHS.

The first four paragraphs were for (1) screening services...indicated as medically necessary, (2) vision services...indicated as medically necessary, (3) dental services...indicated as medically necessary, and (4) hearing services...indicated as medically necessary.

It is no typographical error that “medically necessary” is not found in Paragraph 5. The authors knew that it can take as long as 10 or 15 years before a treatment, procedure, drug, or device could be categorized as “medically necessary”. This is especially true for treatments for brain-injury, where there haven’t been any substantive improvements for 10,000 years or so.

Here’s why it can take up to 10 or 15 years before a treatment can be declared “medically necessary”. First there’s a pilot study. Then if the results are positive, a double-blind controlled study. Again, if the results are positive, they are submitted to peer-reviewed medical journals for publication. The docs scratch their chins and think about it, argue about it, then somebody else does a double-blind controlled study to see if they get the same results. If so, and it gets published, a few docs will try it and report their findings. If the results are generally positive, somebody else will do the definitive double-blind controlled study to absolutely validate the treatment/service/drug.

But because children don’t have time to wait for the Industry of Medicine to decide if something is “medically necessary”, the language of Paragraph 5 provides the opportunity for the EPSDT statute to create its own definition of medical necessity--to be made on the basis of whether the treatment or service or device or whatever “it” is--is necessary to correct or ameliorate a defect or condition.

You’ll also notice that Paragraph 5 is enforceable for Hyperbaric Oxygen Therapy even if pediatric neurologists are against HBOT. If you look at each of the first four paragraphs, services are contingent and conditional. Services are based on “which meet reasonable standards of medical practice, as determined by the State after consultation with recognized medical organizations involved in child health care.”

This conditional requirement is not mentioned in Paragraph 5 because the only “requirement” is whether or not a treatment is necessary to correct or ameliorate. In other words, it doesn’t matter what pediatric neurologists or other medical professionals think of HBOT for brain-injury.

In the case of Hyperbaric Oxygen Therapy, the efficacy of the treatment can be

verified by objective scientific analysis of SPECT-scan imaging before HBOT and again after a certain number of treatments.

Please see <http://www.hyperbarics.org> for more information on the physiology of Hyperbaric Oxygen Therapy.

Whatever you do, do a SPECT-scan before HBOT, then do a second scan within a couple of hours of your last HBOT. The SPECT-scan evidence is your proof that HBOT is “necessary to correct or ameliorate” your child’s brain-injury.

If you pull 42 USC § 1396d(r) and quote it in a letter that fully explains why Paragraph 5 was written the way it was written, not only will your intimate knowledge of the law intimidate most Medicaid caseworkers, they may be more likely to say yes instead of no--simply because they’ll believe you know more about the Medicaid law than them.

Hope this helps.