STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

**MEMORANDUM**

DATE: July 23, 2012

TO: Ms. Sharon L. Summers, DMMA
Planning & Policy Development Unit

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 16 DE Reg. 44 [DMMA Proposed Medicaid Telemedicine Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMAs) proposal to adopt a regulation allowing use of a telemedicine delivery system for providers enrolled under the Delaware Medicaid program. The proposed regulation was published as 16 DE Reg. 44 in the July 1, 2012 issue of the Register of Regulations. SCPD has the following observations and recommendations.

First, authorizing telemedicine offers many advantages to individuals with disabilities, including less transportation time and expense in reaching providers and improved access to subspecialties not widely available in a local area. SCPD endorses this concept.

Second, the standards omit any requirement that the use of telemedicine be considered only when it is consistent with effective communication. The Americans with Disabilities Act generally contemplates accommodations to ensure effective communication between medical providers and patients. See attachments. Therefore, it would be preferable to "highlight" this consideration in the regulation since it could otherwise be inadvertently overlooked. The following sentence could be added:

> The provision of services through telemedicine must include accommodations, including interpreter and audio-visual modifications, if necessary to ensure effective

communication.

Third, in Section 27, "Provider Qualifications", second paragraph, first bullet, the verb/predicate has been omitted and the word "within" is misspelled. Consider the following amendment: "Act within their scope of practice".

Fourth, in the "Covered Services" section, the reference to "illness or injury" is "underinclusive" since it would exclude diagnoses and treatment of "conditions" such as cerebral palsy or epilepsy. Medicaid covers more than illnesses and injuries. Compare attached DHSS definition of "medical necessity".

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendations on the proposed regulation.

cc: Ms. Rosanne Mahaney
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

16reg44 dmma-telemedicine 7-23-12

## Washington Lawyers' Committee and Sutherland File Suit to Protect Deaf Patients' Rights

1/11/2005

Washington (January 11, 2005)—For the first time, deaf patients have taken a hospital to court claiming that its provision of interpreters through inadequate video conferencing technology does not provide them with effective communication in critical medical situations. The Washington Lawyers' Committee for Civil Rights and Urban Affairs and Sutherland Asbill & Brennan LLP today filed a civil rights lawsuit on behalf of seven deaf individuals who sought treatment at Laurel Regional Hospital in Laurel, Md., and despite their specific and repeated requests were denied in-person qualified sign language interpreter services. The plaintiffs allege that they were instead provided with inadequate video interpreting, cryptic notes or, most often, no communication at all.

The lawsuit filed in U.S. District Court for the District of Maryland alleges that the plaintiffs were denied the benefit of effective communication with physicians and health care providers at Laurel Hospital, were unable to provide informed consent to treatment, were denied the opportunity to participate in their treatment, and were denied the full benefit of the health care services provided by Laurel Hospital, in violation of the Americans with Disabilities Act (the ADA) and other laws.

The plaintiffs complain that the Hospital relied principally on video remote interpreting (VRI), a means of utilizing a remote interpreter through videoconferencing technology. However, plaintiffs allege that Hospital staff often refused to set up the VRI equipment, and that they were not adequately trained to set up the equipment correctly or quickly. Moreover, plaintiffs allege that the equipment used by the Hospital was difficult to view and insufficiently mobile. Most important, plaintiffs note that the two-dimensional nature of video cannot effectively capture sign language, which is a three-dimensional language.

Elaine Gardner, Director of the Washington Lawyers' Committee Disability Rights Project, says deaf patients, such as the plaintiffs, should receive the same level of effective communication provided for hearing patients. "The ADA is clear – deaf patients have the right to understand, and be understood by, their medical providers."

One of the seven plaintiffs, Elizabeth Gillespie, went to Laurel Hospital emergency room on November 1, 2003, to receive treatment for severe abdominal pain, nausea and vomiting, among other symptoms. Ms. Gillespie was required to wait hours, denied numerous requests for an in-person interpreter, and was prepared for medical tests in a manner that was personally humiliating, including having a male attendant snap her bra as a means of communicating with her that it needed to be removed. As with several of the plaintiffs, the VRI technology, when it was provided to Ms. Gillespie, proved woefully inadequate. "This was the last straw for me," said Mrs. Gillespie,

who said her experience gave her the incentive to contact the Lawyers' Committee and bring this lawsuit.

Under the ADA, discrimination includes the failure to provide auxiliary aids and services. The term "auxiliary aids and services" under the ADA includes "qualified interpreters" who make "aurally delivered materials available to individuals with hearing impairments."

"This is not an indictment of video interpreting," says **Lewis S. Wiener**, a litigation partner with Sutherland, who represents the plaintiffs pro bono. "Rather, the question is whether, based on the facts, Laurel Hospital's use of video remote interpreting and its refusal to provide these individuals with in-person interpreters meets the requirements of the ADA. In this case it clearly did not. Laurel Hospital's failure to provide effective communication has directly injured and continues to injure the plaintiffs."

The suit seeks preliminary and permanent injunctions against Laurel Hospital and an order requiring the hospital to provide deaf individuals with auxiliary aids and services necessary for effective communication, including qualified sign language interpreters, TTY's and close captioned televisions. The suit also seeks compensatory and punitive damages and attorneys fees and costs.

In addition to Mr. Wiener, Sutherland attorneys David A. Last and Thomas R. Bundy III are involved in the matter. All are available to comment on the case. To view a copy of the complaint online, please visit www.sablaw.com/file_upload/PR011105.pdf.

The Washington Lawyers' Committee for Civil Rights and Urban Affairs, for over 35 years, has represented both individuals and groups seeking to vindicate their civil rights. It has handled over 5,000 civil rights cases, in employment, housing, public accommodations, and other aspects of urban life. It represents people with claims of discrimination based on race, gender, national origin, disability, age, religion, and sexual orientation.

Sutherland Asbill & Brennan is a national law firm known for solving challenging business problems and resolving unique legal issues for many of the nation's largest companies. Founded in 1924, the firm has grown to more than 400 lawyers in Atlanta, Austin, Houston, New York, Tallahassee and Washington. For further information about the firm, please visit, www.sablaw.com.

**MEDIA CONTACTS** To arrange an interview with a Sutherland attorney or to learn more about a particular issue, please contact:

Kimberly Kowalski
Communications Coordinator

404.407.5174

© 2012 Sutherland

Jobs

Gazette.Net
Maryland Community Newspapers Online

Montgomery | Prince George's | Frederick | Sports | Business | Politics | Entertainment | Opinion | Calendar | Autos | Homes | GazetteBuyandSell.com | Classifieds | Coupons | Help

## Deaf patients settle Laurel Regional suit

Hospital to re-evaluate communication needs of hearing-impaired

Thursday, July 20, 2006

by Steve Earley
Staff Writer

Seven deaf patients have settled a 2005 lawsuit against Laurel Regional Hospital that alleged the facility failed to provide adequate assistance to hearing-impaired patients and visitors.

The U.S. Department of Justice, which intervened on behalf of seven plaintiffs, announced an agreement Friday requiring the hospital to assess the communication needs of hearing-impaired individuals upon arrival and to provide qualified interpreters as soon as possible.

The settlement also provides undisclosed damages mutually agreed upon with the hospital to the plaintiffs, the plaintiffs' law firm said. The Jan. 11, 2005 lawsuit sought compensatory and punitive damages.

Suing under the Americans with Disabilities Act, the seven deaf patients alleged Laurel Regional ignored repeated requests for in-person, qualified sign language interpreters, forcing them to communicate though cryptic notes, lip reading and what they said were inadequate video interpreting services.

In one case, the plaintiffs alleged, the hospital refused to communicate with a deaf woman whose son, an emergency room patient, was going in and out of consciousness.

Another claim alleged that a former patient was rushed to another hospital because she did not understand her diagnosis.

"We were behind the times and we needed to improve our communications with the hearing impaired," said hospital spokeswoman Suzanne C. Almalel.

The "consent decree" filed Friday in federal court in Greenbelt requires Laurel Regional's parent company Dimensions Healthcare System to provide qualified in-person interpreters or real-time video interpreting services approved by the Department of Justice when necessary for effective communication.

Circumstances involving lengthy or complex interactions, such as admissions and detailed discussions of symptoms, diagnosis and treatment, were specifically identified as instances when assistance would be necessary.

Plaintiff Cary Barbin, a 37-year-old information systems director at Gallaudet University, said he is "very pleased" with the settlement.

"We all wanted to enforce the policy that requires the hospital to provide interpreters," said Barbin, who has been deaf since birth, in an e-mail message. "Some of us may use the hospital again in the future and we want to be assured that we will get an interpreter."

Barbin said that he's received care at several hospitals other than Laurel and was always provided an interpreter, but sometimes had to remind institutions of their obligations under the Americans With Disabilities Act.

"Generally, after hearing more information, most hospitals and doctor's offices would comply by providing interpreters," he said.

Washington, D.C.-based law firm Sutherland Asbill & Brennan LLP and the Washington Lawyers' Committee for Civil Rights and Urban Affairs represented the plaintiffs.

"It was a long fight," said Thomas Bundy, a litigation associate with Sutherland Asbill & Brennan who worked on the case. "But the hospital has made a lot of advancements for the deaf and hearing impaired community. They really should be applauded."

Find what you are looking for...shop GBS...New Items listed daily
GazetteBuyandSell.com

Find what you are looking for...shop GBS...New Items listed daily
GazetteBuyandSell.com

Gazette Health
Dimensions Healthcare System
CLICK HERE FOR COMPLETE LIST

TOP JOBS
See all jobs

SEARCH DIRECTORIES
Search all directories

Place a classifieds ad now

Almalel said Laurel Regional, in anticipation of a settlement, completed a $4,800 upgrade of its video interpreting system in May.

By expanding bandwidth, patients and visitors can now communicate with interpreters in real time, she said.

Much like video conferencing, the system broadcasts over high-speed Internet lines images and sounds from a hospital room to an off-site interpreter, and vice versa.

According to Almalel, Laurel Regional is one of 230 hospitals in the nation with the technology. Laurel leases the system from a medical equipment firm for $750 a month and also pays usage fees, she said.

"I commend the Laurel Regional Hospital for working with us," Wan J. Kim, assistant attorney general for Civil Rights, said in a statement. "And I hope this agreement will be a model for other hospitals to make certain that individuals who are deaf or hard of hearing have the same access to medical care and treatment."

Prosecutors noted that video interpreting might be difficult to use for patients whose conditions restrict their ability to view a screen or perform sign language. Almalel said the hospital uses video conferencing only if an on-call interpreter is not available and then only until one can arrive.

E-mail Steve Earley at searley@gazette.net.

Hire Locally from ONLY $99
The Gazette

RESOURCES
About us
Advertise
Contact us
Post-Newsweek Meda, Inc. Jobs
Nonprofits
Montgomery
Frederick
Prince George's

Business Directory

Gaithersburg Fitness Centers
Gaithersburg Beauty Salons
Gaithersburg Contractors
Gaithersburg Weddings
Gaithersburg Restaurants
Gaithersburg Travel
Gaithersburg Attorneys
Gaithersburg Pet Supplies
Gaithersburg Doctors
Gaithersburg Shopping

Search

Browse the full business directory
Powered by Local.com

Copyright © 2012 Post-Newsweek Media, Inc./Gazette.Net
Contact Us | About Us | Privacy Policy | FAQ | Terms of Service | E-Letters | Place Classified Ad |
The Gazette | 9030 Comprint Court | Gaithersburg, MD 20877 | main number: 301-670-2565, classifieds: 301-670-2500

U.S. Department of Justice
Civil Rights Division
*Disability Rights Section*

Americans with Disabilities Act

# ADA Business BRIEF:

## Communicating with People Who Are Deaf or Hard of Hearing in Hospital Settings

People who are deaf or hard of hearing use a variety of ways to communicate. Some rely on sign language interpreters or assistive listening devices; some rely primarily on written messages. Many can speak even though they cannot hear. The method of communication and the services or aids the hospital must provide will vary depending upon the abilities of the person who is deaf or hard of hearing and on the complexity and nature of the communications that are required. **Effective communication is particularly critical in health care settings where miscommunication may lead to misdiagnosis and improper or delayed medical treatment.**

Under the Americans with Disabilities Act (ADA), hospitals must provide effective means of communication for patients, family members, and hospital visitors who are deaf or hard of hearing.

The ADA applies to *all* hospital programs and services, such as emergency room care, inpatient and outpatient services, surgery, clinics, educational classes, and cafeteria and gift shop services. Wherever patients, their family members, companions, or members of the public are interacting with hospital staff, the hospital is obligated to provide effective communication.

Exchanging written notes or pointing to items for purchase will likely be effective communication for brief and relatively simple face-to-face conversations, such as a visitor's inquiry about a patient's room number or a purchase in the gift shop or cafeteria.

Written forms or information sheets may provide effective communication in situations where there is little call for interactive communication, such as providing billing and insurance information or filling out admission forms and medical history inquiries.

For more complicated and interactive communications, such as a patient's discussion of symptoms with medical personnel, a physician's presentation of diagnosis and treatment options to patients or family members, or a group therapy session, it may be necessary to provide a qualified sign language interpreter or other interpreter.

**Sign language interpreters**

Sign language is used by many people who are deaf or hard of hearing. It is a visually interactive language that uses a combination of hand motions, body gestures, and facial expressions. There are several different types of sign language, including American Sign Language (ASL) and Signed English.

**Oral interpreters**

Not all people who are deaf or hard of hearing are trained in sign language. Some individuals with hearing disabilities are trained in speech reading (lip reading) and can understand spoken words fairly well with assistance from an oral interpreter. Oral interpreters are specially trained to articulate speech silently and clearly, sometimes rephrasing words or phrases to give higher visibility on the lips. Natural body language and gestures are also used.

**Cued speech interpreters**

A cued speech interpreter functions in the same manner as an oral interpreter except that he or she also uses a hand code, or cue, to represent each speech sound.

**Computer Assisted Real-time Transcription (CART)**

Many people who are deaf or hard of hearing are not trained in either sign language or speech reading. CART is a service in which an operator types what is said into a computer that displays the typed words on a screen.

Situations where an interpreter may be required for effective communication:

- discussing a patient's symptoms and medical condition, medications, and medical history
- explaining and describing medical conditions, tests, treatment options, medications, surgery and other procedures
- providing a diagnosis, prognosis, and recommendation for treatment
- obtaining informed consent for treatment
- communicating with a patient during treatment, testing procedures, and during physician's rounds
- providing instructions for medications, post-treatment activities, and follow-up treatments
- providing mental health services, including group or individual therapy, or counseling for patients and family members
- providing information about blood or organ donations
- explaining living wills and powers of attorney
- discussing complex billing or insurance matters
- making educational presentations, such as birthing and new parent classes, nutrition and weight management counseling, and CPR and first aid training

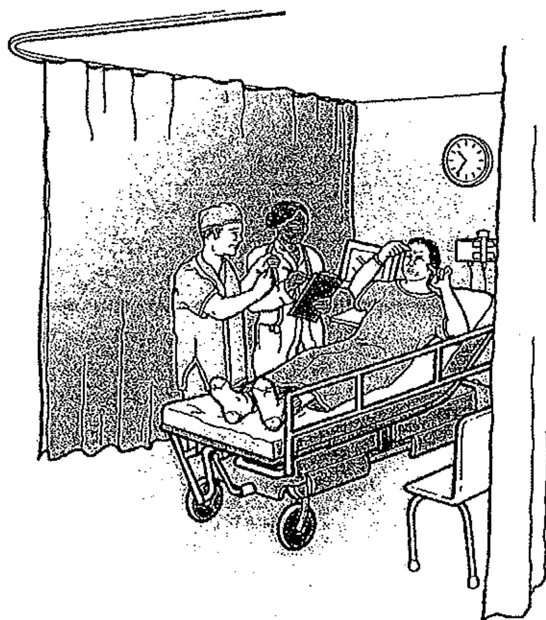
Hospitals may need to provide an interpreter or other assistive service in a variety of situations where it is a family member or companion rather than the patient who is deaf or hard of hearing. For example, an interpreter may be necessary to communicate where the guardian of a minor patient is deaf, to discuss prognosis and treatment options with a patient's spouse or partner who is hard of hearing, or to allow meaningful participation in a birthing class for a prospective new father who is deaf.

Individuals with hearing disabilities have different communication skills and the hospital should consult with each individual to determine what aids or services are necessary to provide effective communication in particular situations.

Sign language or other interpreters must be qualified. An interpreter is qualified if he or she can interpret competently, accurately, and impartially. In the hospital setting, the interpreter must be familiar with any specialized vocabulary used and must be able to interpret medical terms and concepts. Hospital personnel who have a limited familiarity with sign language should interpret only in emergency situations for a brief time until a qualified interpreter can be present.

It is inappropriate to ask family members or other companions to interpret for a person who is deaf or hard of hearing. Family members may be unable to interpret accurately in the emotional situation that often exists in a medical emergency.

Hospitals should have arrangements in place to ensure that qualified interpreters are readily available on a scheduled basis and on an unscheduled basis with minimal delay, including on-call arrangements for after-hours emergencies. Larger facilities may choose to have interpreters on staff.



A doctor uses a sign language interpreter to communicate with a patient who is deaf.

For training or other educational services offered to patients or members of the public, additional aids and services such as note takers, captioned videos, and assistive listening systems may be necessary for effective communication.

Hospitals should develop protocols and provide training to ensure that staff know how to obtain interpreter services and other communication aids and services when needed by persons who are deaf or hard of hearing.

It is helpful to have signs and other types of notices to advise persons with disabilities that services and assistance are available and what they need to do to obtain them. It is most useful to post signs at locations where patients or visitors typically seek information or assistance and to include information in general information packets.

Hospitals cannot charge patients or other persons with hearing disabilities an extra fee for interpreter services or other communication aids and services.

For telephone communications, many people who are deaf or hard of hearing use a teletypewriter (TTY, also known as a TDD) rather than a standard telephone. These devices have a keyboard and a visual display for exchanging written messages over the telephone.

A hospital patient uses a TTY in his hospital room.

The ADA established a free nationwide relay network to handle voice-to-TTY and TTY-to-voice calls. Individuals may use this network to call the hospital from a TTY. The relay consists of an operator with a TTY who receives the call from a TTY user and then places the call to the hospital. The caller types the message into the TTY and the operator relays the message by voice to the hospital staff person, listens to the staff person's response, and types the response back to the caller. The hospital must be prepared to make and receive relay system calls, which may take a little longer than voice calls. For outgoing calls to a TTY user, simply dial 7-1-1 to reach a relay operator.

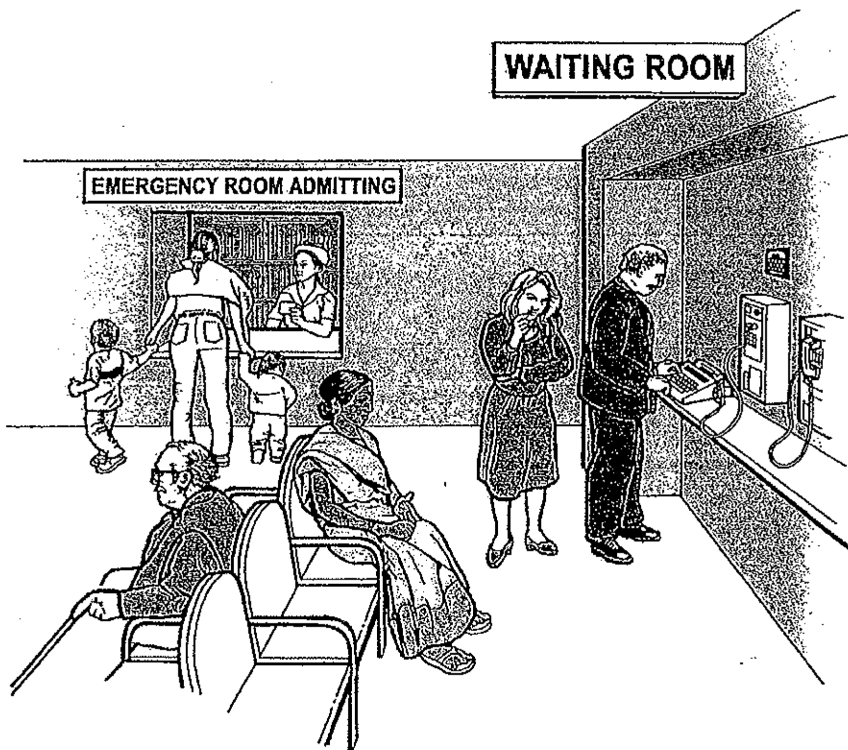
If telephones and televisions are provided in patient rooms, the hospital must provide patients who are deaf or hard of hearing comparable accessible equipment upon request, including TTY's, telephones that are hearing-aid compatible and have volume control, and televisions with closed captioning or decoders.

Visual alarms are not required in patient rooms. However, hospital evacuation procedures should include specific measures to ensure the safety of patients and visitors who are deaf or hard of hearing.

A hospital need not provide communication aids or services if doing so would fundamentally alter the nature of the goods or services offered or would result in an undue burden.

Certain built-in communication features are required for hospitals built or altered after the effective date of the ADA:

- Visual alarms must be provided in all public and common-use areas, including restrooms, where audible alarms are provided.
- TTY's must be provided at public pay phones serving emergency, recovery, or waiting rooms and at least one TTY must be provided at other locations where there are four or more pay phones.
- A certain percentage of public phones must have other features, such as TTY plug-in capability, volume controls, and hearing-aid compatibility. Consult the ADA Standards for Accessible Design for more specific information. [ADA Standards 4.1.3(17), 4.31]




A man uses aTTY that is connected to a pay telephone in a hospital emergency room waiting area.

## ADA Information

You may view or download ADA information on the **ADA website**. This website provides access to the ADA Business Connection, ADA design standards, regulations, policy letters, technical assistance materials, and general ADA information. It also provides links to other Federal agencies and news about new ADA requirements and enforcement efforts.

**www.ada.gov**

If you have specific questions concerning the ADA, call the Department of Justice **ADA Information Line.**

**(800) 514-0301** (voice)
**(800) 514-0383** (TTY)

Duplication is encouraged
October 2003

MEDNES~2.DOC

DEPARTMENT OF HEALTH & SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES

# MEDICAL NECESSITY DEFINITION

**MEDICAL NECESSITY is defined as:**

the essential need for medical care or services (all covered State Medicaid Plan services, subject to age and eligibility restrictions and/or EPSDT requirements) which, when prescribed by the beneficiary's primary physician care manager and delivered by or through authorized and qualified providers, **will**:

- be directly related to the diagnosed medical condition or the effects of the condition of the beneficiary (the physical or mental functional deficits that characterize the beneficiary's condition), and be provided to the beneficiary only;
- be appropriate and effective to the comprehensive profile (e.g. needs, aptitudes, abilities, and environment) of the beneficiary and the beneficiary's family;
- be primarily directed to treat the diagnosed medical condition or the effects of the condition of the beneficiary, in all settings for normal activities of daily living, but will not be solely for the convenience of the beneficiary, the beneficiary's family, or the beneficiary's provider;
- be timely, considering the nature and current state of the beneficiary's diagnosed condition and its effects, and will be expected to achieve the intended outcomes in a reasonable time;
- be the least costly, appropriate, available health service alternative, and will represent an effective and appropriate use of program funds;
- be the most appropriate care or service that can be safely and effectively provided to the beneficiary, and will not duplicate other services provided to the beneficiary;
- be sufficient in amount, scope and duration to reasonably achieve its purpose;
- be recognized as either the treatment of choice (i.e. prevailing community or statewide standard) or common medical practice by the practitioner's peer group, or the functional equivalent of other care and services that are commonly provided;
- be rendered in response to a life threatening condition or pain, or to treat an injury, illness, or other diagnosed condition, or to treat the effects of a diagnosed condition that has resulted in or could result in a physical or mental limitation, including loss of physical or mental functionality or developmental delay;

**and will be reasonably determined to:**

- diagnose, cure, correct or ameliorate defects and physical and mental illnesses and diagnosed conditions or the effects of such conditions; **or**
- prevent the worsening of conditions or effects of conditions that endanger life or cause pain, or result in illness or infirmity, or have caused or threaten to cause a physical or mental dysfunction, impairment, disability, or developmental delay; **or**
- effectively reduce the level of direct medical supervision required or reduce the level of medical care or services received in an institutional setting or other Medicaid program; **or**
- restore or improve physical or mental functionality, including developmental functioning, lost or delayed as the result of an illness, injury, or other diagnosed condition or the effects of the illness, injury or condition; **or**
- provide assistance in gaining access to needed medical, social, educational and other services required to diagnose, treat, or support a diagnosed condition or the effects of the condition,

**in order that**

the beneficiary might attain or retain independence, self-care, dignity, self-determination, personal safety, and integration into all natural family, community, and facility environments and activities.