California Public Utilities Commission

Order Instituting Rulemaking 13-03-008
To Add Speech Generating Devices to the
Deaf and Disabled Telecommunications Program
Implementing Assembly Bill 136

Deaf and Disabled Telecommunications Program
Speech Generating Devices Distribution
First Six Months—January 01, 2014 through June 30, 2014

Submitted by the Communications Division
in Compliance with Decision 13-12-054
July 31, 2014

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Executive Summary

Decision (D.) 13-12-054 directs the CPUC's Communications Division (CD) to provide a report by July 31, 2014 on the first six months of SGD distribution addressing, among other matters, the adequacy of current SGD funding levels and the impact on available DDTP funds.

Assembly Bill (AB) 136 (Beall, Statutes 2011, Chapter 404, effective January 1, 2012) expanded the Deaf and Disabled Telecommunications Program (DDTP) to include speech generating devices (SGDs) as the provider of last resort. It also added speech language pathologists as certifying agents. The California Public Utilities Commission (CPUC or Commission) issued Rulemaking (R.) 13-03-008 to implement AB 136, resulting in D. 13-12-054, which established SGD rules pursuant to legislation by January 01, 2014.

With the SGD distribution rules in place, CD focused on SGD distribution design and implementation. The DDTP SGD application process, for those SGDs that are durable medical equipment (DMEs), was posted on the Commission's website on January 31, 2014, and a procurement process was put in place by mid-February 2014.

CD received 28 DDTP SGD applications as of June 06, 2014. Of those, CD reviewed and approved for funding 22 SGD applications, totaling over $171,900. The turnaround time for each individual application is approximately 28 days.

Concurrently, CD moved forward with initial planning for a trial distribution for SGDs that are supplemental telecommunications equipment (STEs), which will expand options and provide alternatives to DME SGDs (e.g., tablets). The Commission held a workshop on April 29, 2014 in R. 13-03-008, which remains open, to discuss how an STE trial might be administered, and began discussions with the Department of Rehabilitation (DOR) on partnering with them on an STE trial.

Planning for and implementing DDTP SGD distribution involved more challenges than CD had anticipated. Challenges included procurement, changes in industry and insurance reimbursement policy, barriers to participation, and cost containment issues. Despite the various challenges, CD was able to process and approve for funding 22 applications in a timely manner. Given experience to date, CD does not have sufficient data to determine if existing SGD funding levels are adequate, or if an equipment dollar cap is necessary. CD will continue to monitor industry changes, including potentially significant changes in Medicare policy, move forward with SGD distribution, and raise awareness among potential SGD applicants, speech language pathologists, assistive technology professionals, and other practitioners about the availability of SGDs through the DDTP.

Background and Introduction

This report is in response to Decision (D.) 13-12-054 which directs CD to provide a brief report by July 31, 2014 on the first six months of SGD distribution addressing, among other matters, the adequacy of current SGD funding levels and the impact on available DDTP funds. The issues to be addressed include:

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."

The Deaf and Disabled Telecommunications Program (DDTP) was established by the Commission for the purpose of providing assistive telecommunications equipment and services to individuals who are certified as having a hearing, speech, mobility, vision, or cognitive disability. The DDTP provides relay service through the California Relay Service (CRS) and assistive telecommunications equipment through the California Telecommunications Access Program (CTAP). The DDTP is funded via a surcharge assessed against all charges for all intrastate services on end-user telephone bills in California.

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 Code Section 2881, as it relates to telecommunications. It expands the DDTP to include Speech Generating Devices (SGD), requiring the CPUC to adopt rules to implement SGD distribution by January 1, 2014. Section 2881(e)(1) states that, "it is the intent of the Legislature that the commission be the provider of last resort [of SGDs] and that eligible subscribers first obtain coverage from any available public or private insurance." As amended, Public Utilities

Code Section 2881 also adds Speech Language Pathologists (SLPs) to the list of agents that can certify individuals as eligible to receive equipment from the DDTP.

In response to the legislation, the Commission initiated Order Instituting Rulemaking (R.) 13-03-008 to carry out the provisions of AB 136, expanding the DDTP to include and distribute SGDs (i.e., the device and associated accessories, mounting systems, and telecommunications component) to any subscriber who is certified as having a speech disability requiring an SGD. CPUC rules, guidelines, and procedures for implementation of SGD funding and distribution were established in CPUC D. 13-12-054 (R. 13-03-008). These included rules for those SGDs identified as durable medical equipment by the U.S. Department of Health and Human Services (USDHSS). The decision also authorizes the addition of rules to govern the access to and distribution of other assistive devices not addressed in AB 136 which are identified as Supplemental Telecommunications Equipment (STE). Rules for those SGDs which are DMEs as well as those that are STEs are in Attachments A and B respectively to D. 13-12-054.

Initial DDTP SGD funding and distribution during the first six months was targeted to SGD applicants who met the following criteria:

1) Assessed for an SGD by a Speech Language Pathologist (SLP) and require the SGD for access to, and use of, the telephone network; and
2) Required an SGD identified as durable medical equipment (DME) by the USDHSS.

D. 13-12-054 in R. 13-03-008 indicated that the Commission may consider further issues in a second phase of the proceeding including :

1) expanding SGD distribution to those who have not yet been assessed for an SGD and/or do not qualify for funding from any other funding source; and
2) amending the scope of this proceeding to address concerns raised that were not otherwise considered in Phase 1.

That Decision also authorized the addition of rules, guidelines and procedures to govern the access to and distribution of SGDs to any subscriber who is certified as having a speech disability requiring this device. Additionally, a second phase of the proceeding would address:

1) whether further guidance is required in the administration of the distribution programs adopted therein;
2) whether exemptions or expedited procedures should be added to the rules adopted therein when there is a specific need; and
3) assessment of the sufficiency of funding.

Most recently, the CPUC held a workshop on April 29, 2014 to discuss Phase 2 issues of SGD distribution. The agenda topics for the workshop are as follows:

1) Is further guidance needed for the administration of a Pilot or Trial involving SGDs that are Supplemental Telecommunications Equipment or STEs?
2) Should exemptions or expedited procedures be added to the rules adopted in D. 13-12-054 in Phase 1 of R. 13-03-008?
3) Assessment of the sufficiency of SGD funding pursuant to Pub. Util. Code Section 2881(e) and D.13-12-054.
4) Medicare Capped Rental Announcement and Changes of April 1 and Potential Impact on DDTP SGD distribution program.

In addition to the activities in the proceeding, the enabling legislation (AB 136, CH 404, 2011) directs the Commission to:

1) Provide a DDTP Annual Report to the Legislature by March 1 of each year [P.U. Code Section 2881(k)] including the SGD information identified in Items #2 and #3 below.
2) Evaluate options for controlling the program costs of providing speech generating devices [P.U. Code 2881(l)].

3) Provide information on any barriers to participation in the program by eligible subscribers [P.U. Code 2881(l)].

Speech Generating Devices Distribution—First Six Months

Speech Generating Devices Distribution Status

The initial program design and application process was developed in January 2014 following the establishment of SGD distribution rules by January 01, 2014 pursuant to D. 13-12-054 and AB 136 (CH 404, 2011). The DDTP SGD application process was posted on the CPUC website on January 31, 2014. A procurement process was put in place by mid-February 2014. The link to the DDTP SGD application is: http://www.cpuc.ca.gov/PUC/hottopics/2Telco/140131_sgp.htm.

The first SGD equipment was delivered in February 2014. Of the 28 DDTP SGD applications received as of June 06, 2014, CD reviewed and approved for funding 22 SGD applications, with total expenditures over $171,900. Of the 28 applications received, two were withdrawn, one request was for a vendor not currently under contract with the CPUC, one is still pending additional information when the individual's insurance status changed, one was a duplicate submitted by both the SLP and the SGD vendor, and one is pending receipt of additional information. The funding requested in the individual SGD applications received as of June 6, 2014 ranged from over $1,900 to over $17,000. The funding requested varied from partial funding, where another funding source (e.g., the applicant's public or private insurance) paid a portion of the SGD, to 100% funding, where the DDTP assumed the entire cost of the SGD. Applicants were geographically dispersed, had a range of underlying medical conditions or diagnoses requiring an SGD, and ranged from under 10 years old to over 70 years old.

The average turnaround time (i.e., from the time the CPUC receives an SGD application, completes its review, including receiving any missing information, and authorizes funding) ranged from seven days to forty-nine days, with an average of twenty-eight days. In other words, it takes on average 28 days from when the SGD application package arrives at the

Commission to when the CPUC issues an SGD funding approval letter to the applicant. CPUC issuance of a purchase order can take additional time.

The foregoing is based on data from the first six months of SGD distribution. The CPUC's Communications Division (CD) will continue to monitor the application process and make changes in its administrative processes as required.

Speech Generating Devices and Deaf and Disabled Telecommunications Program Funding

D. 13-12-054, Section 4.2.3, directed CD staff to address the items enumerated below in this report. Those items address the adequacy of current SGD funding levels and the impact on available DDTP funds.

1) *"how much money was spent during the first six months of the SGD distribution program and the* Supplemental Telecommunications Equipment program";
   CD reviewed and approved 22 applications with a total DDTP SGD funding requested by SGD applicants of $171,900. The Supplemental Telecommunications Equipment (STE) distribution is still in initial planning phase and no money has been spent on STE distribution to date.
2) *"whether an adjustment to the current DDTP surcharge is necessary";*
   Based on the amount of funding approved thus far, there does not appear to be a need to increase the surcharge. CD will continue to monitor for any necessary adjustment.
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*
   There is insufficient data to determine if an equipment dollar cap is necessary. CD will continue to monitor for any necessary adjustment.
4) *"if a cap should be in place, what should that amount be."*
   As indicated above, there is insufficient data to determine if an equipment dollar cap is necessary. CD will continue to monitor for any necessary adjustment.

Supplemental Telecommunications Equipment Trial

In D. 13-12-054, "[t]he 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)."

CD is moving forward with planning a trial distribution of "Supplemental Telecommunications Equipment" which will expand options and provide alternatives to those SGDs identified as Durable Medical Equipment. Examples of STEs include, but are not limited to, tablets and other assistive devices. CD has engaged in preliminary conversations and meetings with the California Department of Rehabilitation (DOR) about partnering with DOR to implement the SGD Trial. To leverage the statewide Assistive Technology Networks and the 32 independent living centers, the Trial would not be limited to clients of DOR.

As part of Phase 2 of the CPUC rulemaking, which remains open, the CPUC also received comments and held a workshop on April 29, 2014 to solicit input from SGD users, SLPs and other practitioners, and others in the SGD community and industry on the administration of STEs, including a potential STE Trial. During the workshop, participants discussed assembling a task force for the purpose of providing guidance on the distribution of SGDs that are STEs. CD will be moving forward with creating the task force in the near future.

Challenges

CD encountered a number of challenges with the initial DDTP SGD distribution. Some of these challenges are described below.

a. Procurement

In the process of planning for SGD procurement, the CPUC worked with the California Department of General Service's (DGS) Procurement Division and the California Department of Technology (CalTech). After numerous meetings with DGS and CalTech, it was decided that an interim procurement vehicle be used to fund approved SGDs. The interim procurement vehicle allowed the CPUC to enter into a Master Purchase Agreement (MPA) with four SGD providers/manufacturers for a period of 18 months.

While the MPAs allowed the Commission to begin acquiring SGDs sooner than other procurement vehicles which had much longer planning horizons, the procurement process was more time and resource intensive than CD initially envisioned. A permanent solution could result in a state list of approved prices and equipment. Under the current procurement process, there is an applicant-specific, customized analysis of each application required, as well as considerable interaction with the SLP and SGD vendor, to ensure that the applicant is receiving the SGD recommended by the SLP and that any applicable insurance is applied. The uniqueness of each order has required significant staff time to process, which affects the pace at which the CPUC is able to process SGD applications.

In the near future, the CPUC will engage in a more permanent procurement vehicle. The goal would be to identify a procurement vehicle which is less resource and time

intensive. Additionally, we will need to potentially expand the procurement vehicle to add additional SGD vendors, expand equipment offered, and address recent changes in Medicare rules, which impact current procurement process. The Medicare changes are described below.

b. Changes in Industry and Insurance Reimbursement Policy

During the initial six months of DDTP SGD distribution and funding, there have been changes in the industry involving SGD vendor organizational changes, as well as significant changes in insurance reimbursement policy by Medicare. Both potentially impact DDTP SGD funding as provider of last resort given current procurement vehicles.

Most notably, Medicare announced that effective April 01, 2014 SGD devices will be reimbursed under a "capped rental" category. Instead of paying for all, or a portion of, an SGD user's SGD device as Medicare previously had, Medicare shifted to a rent-to-own model. Specifically, Medicare will subsidize an SGD user's rental of an SGD device from the SGD provider/manufacturer for a period of 13 months, after which the SGD user will own the SGD device.

The change in Medicare's SGD device reimbursement policy had an immediate impact on the DDTP SGD interim procurement vehicle, and funding and distribution processes. The current DDTP SGD application and funding process assumes SGD user ownership of the SGD, including the device, accessories, mounting system and telecommunications component, versus the new Medicare rental policy. With the advent of the capped rental rule, CD must evaluate and monitor the impact, as well as begin developing policies and procedures to grapple with capped rentals.

c. Barriers to Participation

Since SGD distribution began in early 2014, many potential SGD applicants and SGD SLPs and other practitioners still may not be aware that the DDTP is the provider of last resort for SGDs. However, CD anticipates that the word will eventually spread among potential DDTP SGD applicants and the network of practitioners once DDTP SGD distribution has been in place for a longer period of time. CD has also produced flyers to create awareness in the target groups.

The required assessment by an SLP prior to applying for SGD funding through the DDTP can also be a barrier in that it takes time for the applicant to see an SLP, undergo the SLP assessment, and apply for any applicable public and/or private insurance. However, this may be a necessary and appropriate threshold requirement to ensure that the potential SGD user is provided the appropriate equipment and conforms to the DDTP SGD provider of last resort status. There may be an immediate need for the SGD, but the applicant must take the above steps, which can be lengthy, before requesting for funding from the DDTP.

Another barrier to participation was defining the universe of potential SGD vendors. When CD researched the SGD provider/manufacturer industry, CD identified four SGD providers/manufacturers that provided durable medical equipment, namely, Dynavox, PRC, Tobii-ATI, and Words Plus. All of the applications CD received thus far were for SGDs by the aforementioned provider/manufacturers, except one, which was for Lingraphica. Over the course of six months since the inception of DDTP SGD distribution, CD learned of potentially other SGD providers/manufacturers. Since the CPUC has MPAs with only Dynavox, PRC, Tobii-ATI, and Words Plus, SGD applicants are unable to apply to the DDTP for funding of SGDs other than the four provider/manufacturers with which the CPUC currently contracts. The CPUC anticipates working with DGS and CalTech as appropriate to expand its procurement

vehicle to include additional SGD providers/manufacturers of durable medical equipment.

An additional future barrier could be the SGD application review process. In the initial roll-out, as provider of last resort, CD moved forward with review and approval for a wide range of applications. This was done to ensure that SGDs were distributed as expeditiously as possible. However, CD may narrow the approval criteria going forward if review of the approval process shows there is a need.

d. Potential Cost Containment Issues

The "Speech Generating Device Rules" identified in AB 136 (CH 404, 2011) and enumerated in D. 13-12-054 states that "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." When CD asked SGD providers/manufacturers to provide CD their SGD pricing, CD discovered that for some SGD providers/manufacturers, there were no caps for accessories, mounting systems, or telecommunications component when using Medi-Cal prices. Without any Medi-Cal capped prices, the DDTP may end up paying manufacturer suggested list prices for those items, which could range from as little as under $20 to upwards of $5,000.

Another possible cost issue involves the Medicare capped rental announcement where Medicare indicated that only certain SGD devices would be covered under the rental program. Those devices that are not covered require another insurance source, the SGD user, or a combination thereof to assume the entire cost of the SGD device.

As the provider of last resort, the DDTP may be affected financially by the limited number of devices that qualify for Medicare's capped rental. For example, if an SLP recommends an SGD not covered by Medicare's rental program, the DDTP might be

required to fund the SGD, whereas in the past, Medicare may have subsidized all or a significant portion of that device (e.g., 80%). As CD understands the Medicare policy change, the SGD accessories, mounting systems, and telecommunications component are not impacted by the Medicare capped rental program, only the SGD device. Under the Medicare capped rental policy change, Medicare's price for a DME SGD device is increased by 5%. This increased cost is then spread over the 13 months of the capped rental program.

e. Program Administration

The administration of SGD distribution was much more time and resource intensive than CPUC staff had anticipated. For example, each SGD application package required applicant-specific vendor-specific customized analysis and follow-up. Another example was that SGD vendors were unfamiliar with the California state procurement process, which required vendors at times to make changes to their "business model" in order to accommodate the State contracting and procurement process rules. Additionally, CD staff was required to coordinate with other state agencies for vendor payment. Staff is looking for opportunities to streamline this process.

f. "Provider of Last Resort"

As the provider of last resort, the DDTP has been funding SGDs for applicants where his/her public and/or private insurance does not cover the full balance or outright denies coverage. However, there are some SGD applications received that appeared as though they should be funded via other sources (e.g., schools). For example, the DDTP received three applications for funding from SGD users who were under ten years old. In some of those cases, the applicant's school denied funding the SGD, all or in part. In other instances, Medicare denied funding because of the SGD user

location (e.g., the SGD user was in a skilled-nursing facility or hospice care vs. home).

Of the challenges identified above, all of them appear to be within the CPUC's authority to address at this time, or will require changes in SGD industry practices which are beyond the Commission's control. The CPUC staff will be reaching out to the Commission or Legislature should any challenges emerge that require Commission or Legislative change or intervention.

Speech Generating Devices Distribution Details

A range of persons applied to the DDTP for SGD funding. The CPUC's DDTP, as provider of last resort, was asked to provide partial or full funding with private and public (Medicare, Medi-Cal) insurance applied first.

All applicants were required to have been assessed by an SLP who recommended the SGD, including the device, accessories, mounting systems, and telecommunications component, so the applicant could access and use the telephone.

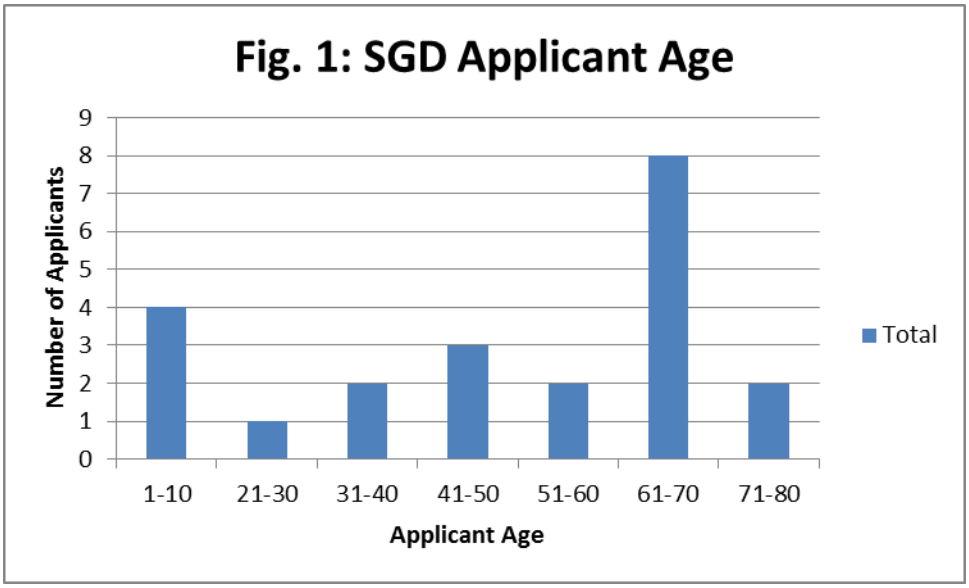
Applicants seeking DDTP SGD funding ranged in age from under 10 years old to over 70 years old (see Figure 1). They had underlying medical conditions or diagnoses which included the following:

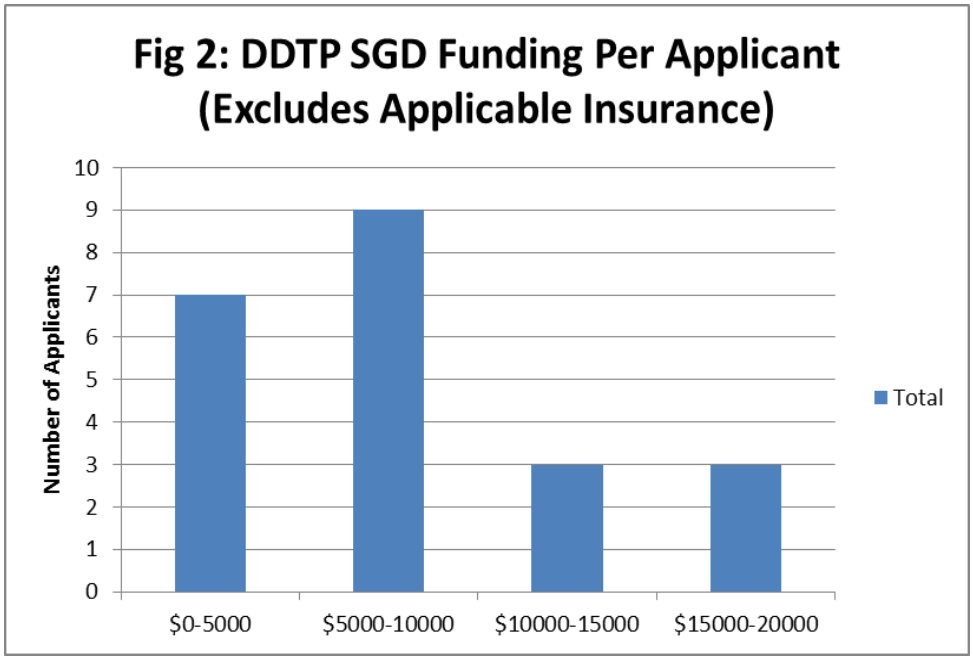
- ALS
- Cerebral Palsy
- Multiple Sclerosis
- Parkinson's Disease
- Stroke
- Traumatic Brain Injury
- Severe Developmental Communication Impairments (autism, mental retardation, and other developmental disabilities)

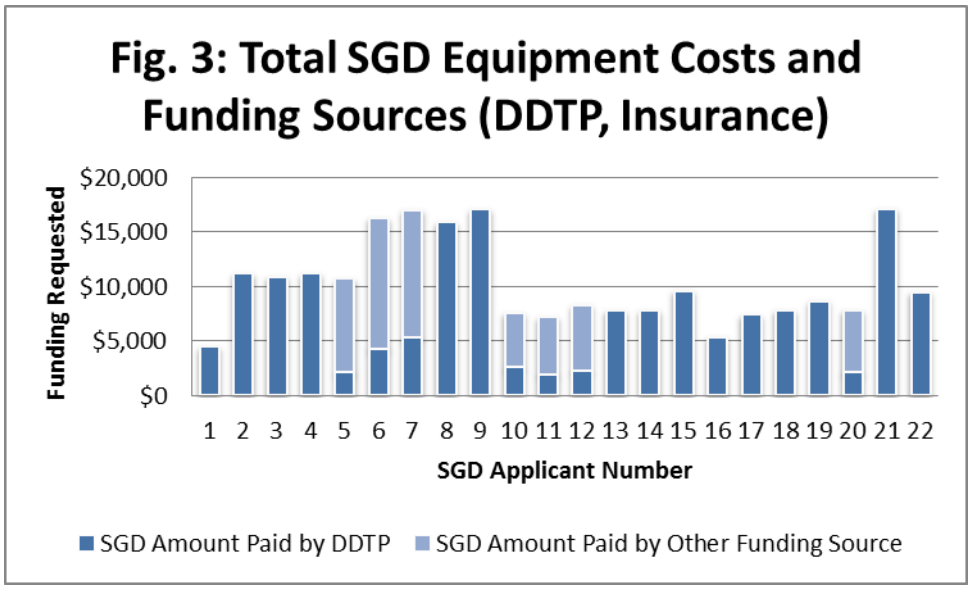
Total amount of funding approved in the first six months of 2014 was over $171,900.

With regard to DDTP SGD funding requests, the majority of applicants requested funding for an amount under $10,000. There were six requests for funding upwards of $10,000, including three in the $15,000 to $17,000 range (see Figure 2).

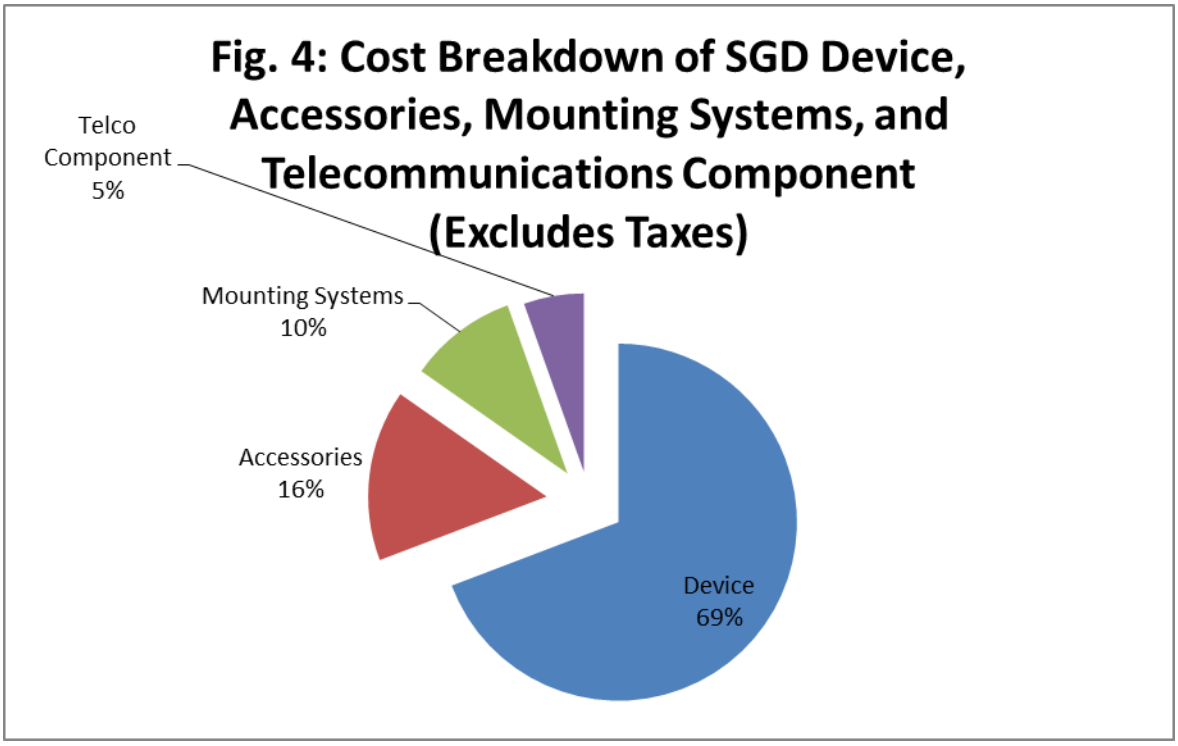
Additional DDTP applicant information is provided in the tables below:

1. 

2. 
Fig 2: DDTP SGD Funding Per Applicant (Excludes Applicable Insurance)
Number of Applicants
10
9
8
7
6
5
4
3
2
1
0
$0-5000
$5000-10000
$10000-15000
$15000-20000
Total

3. 
Fig. 3: Total SGD Equipment Costs and Funding Sources (DDTP, Insurance)
Funding Requested
$20,000
$15,000
$10,000
$5,000
$0
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22
SGD Applicant Number
SGD Amount Paid by DDTP
SGD Amount Paid by Other Funding Source

4.



Preliminary Conclusions and Next Steps

Planning for and implementing DDTP SGD distribution involved more challenges than CD had anticipated. From identifying the appropriate interim procurement vehicle to the customized analysis of each SGD application, the foregoing all continue to be time and resource intensive efforts. However, despite the various challenges, the CPUC was able to process and approve for funding 22 applications in a timely manner. Although the number of applications processed thus far does not provide sufficient data to make definitive conclusions, it does provide a glimpse of the types of applicants and the amount of funding for which they have been applying. CD anticipates the need to continue monitoring of the DDTP SGD application process. Once SGD distribution has been underway for another six months, CD anticipates it will then have more information to make recommendations on any necessary changes to the present SGD application intake, distribution, and procurement processes.

As far as the next steps, the CPUC will work with DGS and CalTech as appropriate on the DDTP SGD procurement vehicle. Also, there is a need to educate and create awareness among potential SGD applicants, as well as SLPs, AT Professionals, and other practitioners about the availability of SGDs through the DDTP. To address this need, there have been flyers produced to create awareness among the aforementioned groups.

Additionally, CD will continue to monitor and collect data from SGD DME applications received. For the STE Trial, CD will be working on assembling a task force that will provide input on how STEs should be distributed. Concurrently, CD will be exploring the possibility of partnering with DOR on STE distribution.

Appendix

Chronology of Events: DDTP SGD Distribution for First Six Months

Date	Event
December 19, 2013	Phase 1 Decision Issued in R. 13.03.008 (D.13-12-054)
January 01, 2014	SGD Distribution Rules Established
January 2014	SGD Application Posted Online on CPUC Website
February 2014	Interim DDTP SGD Procurement Vehicle in Place
February 2014	First SGD Application Received and First SGD Distributed
April 29, 2014	Phase 2 Workshop in R. 13.03.008
July 31, 2014	SGD July 31, 2014 Report—CD