



STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
OFFICE OF FAIR HEARINGS

FILED

May 13, 2024, 10:46 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 24-FH0156

Plan ID No.: [REDACTED]

vs.

CHILDREN'S MEDICAL SERVICES,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on April 10, 2024, 10:06 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner: [REDACTED].
Counsel for Petitioner

For the Respondent: Craig Smith, Esq.
Counsel for Respondent

STATEMENT OF ISSUE

The first issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Petitioner's home health services (private duty nursing) was correct.

The second issue is whether Petitioner's demand for corrective action should be granted.

PRELIMINARY STATEMENT

All parties appeared telephonically. [REDACTED]. (" [REDACTED] "), appeared for the Fair Hearing as Counsel for Petitioner. [REDACTED] (" [REDACTED] "), appeared with [REDACTED]

██████████ as a student representative on behalf of Petitioner. ██████████ (“Mr. ██████████”), appeared with ██████████ as a student representative on behalf of Petitioner. The following individuals appeared as witnesses for Petitioner: ██████████ (“██████████”), Pediatric Cardiologist; ██████████ (“██████████”), Licensed Practical Nurse (“LPN”) for ██████████ (“██████████”); ██████████ (“██████████”), Licensed Practical Nurse (“LPN”) for ██████████; ██████████ (“██████████”), Occupational Therapist; ██████████ (“██████████”), Speech and Language Pathologist; ██████████ (“██████████”), Petitioner’s ██████████; and ██████████, Petitioner’s ██████████.

Craig Smith, Esq. (“Mr. Smith”), appeared for the Fair Hearing as Counsel for Sunshine State Health Plan, Inc. (“Sunshine”). The following individuals appeared for Fair Hearing as witnesses for Respondent: Andrew Metinko, M.D. (“Dr. Metinko”), Medical Director for Sunshine; Kimberly Bouchette, Clinical Appeals Coordinator for Sunshine; Donna Bass, Case Manager for Sunshine; Stephanie Holder, Supervisor for Case Management for Sunshine; April Ross, Director of Nursing for BrightStar; and Jenna Andrews, Director of Operations for BrightStar.

The following individuals appeared for Fair Hearing as observers: Tamara Zanders, Plan Operations Management for Children's Medical Services (“CMS”); Theresa Sawyer, Senior Attorney for Florida Department of Health; and Diana Hearod, Medical Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”).

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a two hundred and forty-nine (249)-page evidence packet. The two hundred and forty-nine (249)-page evidence packet appears in the Office of Fair Hearings document management system as the file

title "24-FH0156 Emailed Correspondence(3).pdf¹." Absent an objection from the Respondent, the undersigned admitted the two hundred and forty-nine (249)-page evidence packet into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner an eighty (80)-page evidence packet. The eighty (80)-page packet appears in the Office of Fair Hearings document management system as the file title "MFH packet [Petitioner].pdf." Absent an objection from the Petitioner, the undersigned admitted the eighty (80)-page evidence packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

The undersigned Hearing Officer held the record open until April 22, 2024, for counsel for both parties to submit written briefs concerning whether Petitioner's demand for corrective action should be granted. On April 22, 2024, Petitioner sent to the Office of Fair Hearings a fifty (50)-page brief, which is hereby admitted into evidence a Petitioner's Composite Exhibit 2 ("PCE 2"). On April 22, 2024, Respondent sent to the Office of Fair Hearings a fifty (50)-page brief, which is hereby admitted into evidence a Respondent's Composite Exhibit 2 ("RCE 2").

On May 6, 2024, the Office of Fair Hearings received Petitioner's Motion to Strike ("Motion") Respondent's Response in Opposition to Petitioner's Memorandum ("Response") . Pursuant to Rule 59G-1.100(15)(c), Florida Administrative Code, the parties to the fair hearing may, within seven days of service, file written memoranda in response to a motion. No reply to a response shall be permitted, unless leave is sought from and granted by the Hearing Officer. Having reviewed and considered the Motion, the undersigned finds Respondent's Response is dated May 2, 2024, and contains additional argument to deny Petitioner's demand for corrective

¹ This file was received on April 4, 2024.

action. Respondent's Response is therefore not a motion. No reply to the written briefs was requested or permitted by the undersigned Hearing Officer. Based on the foregoing, the Petitioner's Motion to Strike is **GRANTED**.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Children's Medical Services ("CMS") Managed Medical Assistance ("MMA") program. See RCE 1 at page 2. CMS is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *Id.*

2. Petitioner is [REDACTED]. *Id.* at 12. Petitioner lives in the community with [REDACTED], [REDACTED], and [REDACTED], [REDACTED]. *Id.* at 11. Petitioner's medical history include encounter

for [REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* at

16.

3. Petitioner is prescribed the following medications: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at 15-16.

4. Petitioner requested continuation of home health services (private duty nursing) for 24 hours per day, 7 days per week. *Id.* at 14-25. In a Notice of Adverse Determination (“NABD”), dated December 15, 2023, Respondent reduced Petitioner’s services. *Id.* at 4-8. The NABD explained the basis of the reduction as follows:

- ✓ We determined that the requested services are **not medically necessary** because the services do not meet the reason(s) checked below: (See Rule 59G-1.010)
- ...
- ✓ Must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient’s needs.

The facts that we used to make our decision are:

Sunshine Health Policy on Review of Private Duty Nursing Requests, FL.UM.26.00. These services have also been reviewed under EPSDT (Early and Periodic Screening, Diagnostic and Treatment).

Rationale: The request for ongoing care by a private duty nurse is partially approved. This is a licensed nurse that will give care in the home. Approval is granted for 84 hours a week. The additional 84 hours is denied for lack of medical need. The plan of care noted flexible hours which can not be approved. This is a written plan of services and support to be given to your child. The request for 24 hours a day for 7 days a week is not supported based on the notes received. Please note that previous approvals for skilled nursing were approved administratively. This means without being reviewed for medical need. Per the clinicals, [REDACTED]
[REDACTED]. The clinical notes that we received does not show that your child needs [REDACTED]
[REDACTED] Your child does not need multiple medications given in the veins. Please talk over other choices with your child's care manager and/or primary care pediatrician (doctor). The care manager is trained to help with this type of request.

Id. at 4-5.

5. On January 1, 2024, Petitioner requested a plan appeal for the reduction of home health services. *Id.* at 26-28. In a Notice of Plan Appeal Resolution (“NPAR”) dated January 3, 2024, Respondent upheld their reduction. *Id.* at 32-34. The NPAR explained as follows:

The request has been reviewed. The review was completed by a licensed doctor. The doctor was not a part of the first review or the findings from that review.

The Medical Director involved is a Board Certified MD with a specialty in Pediatrics.

On 01/02/2024, after consideration of the information you provided to Children’s Medical Services Health Plan in support of your plan appeal, Children’s Medical Services Health Plan hereby denies your plan appeal. As a result, [Petitioner] will not receive Home Health services, effective 01/02/2024.

The facts that we used to make our decision are: The previous decision to partially approve and partially deny private duty nursing services is upheld. The clinical information that we received does not indicate that your child needs [REDACTED]. Your child does not need multiple medications administered in the veins. [REDACTED]. Please discuss other options with your child's care manager and/or primary care pediatrician. The reasons for this decision are based on a set of standards. This included Criteria: Review of Private Duty Nursing Requests, POLICY ID: FL.UM.26.00. This decision was made with regards to EPSDT.

Id. at 32-33.

6. Petitioner’s gastrologist, [REDACTED]. (“[REDACTED]”), wrote a letter dated January 8, 2024, in support of 24-hour per week of home nursing care. The letter states as follows:

[Petitioner] is a patient who is currently under the care of our practice for ongoing medical care and nutritional management Due to [REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

See PCE 2 at page 6.

7. On January 12, 2024, Petitioner requested a Fair Hearing to challenge the reduction of the private duty nursing services. On February 7, 2024, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions (“Scheduling Order”), setting the hearing for March 6, 2024, at 10:00 a.m. EST. At Petitioner’s request, on February 14, 2024, the undersigned issued an Order Granting Continuance and a second Scheduling Order, setting the hearing for April 10, 2024, at 10:00 a.m. EST.

8. [REDACTED], LPN (“[REDACTED]”), a Licensed Practical Nurse and Petitioner’s caregiver, wrote a letter dated March 28, 2024, in support of Petitioner’s request for continued 24-hour private duty nursing services. The letter states as follows:

I am writing to provide detailed information regarding the medical necessity of 24/7 private-duty nursing care for [Petitioner], a patient under consideration for coverage.

Allow me to begin by introducing myself and establishing my qualifications in treating [Petitioner]. I am a Licensed Practical Nurse (LPN) with IV Certification, and two years of experience in this capacity. Throughout my career, I have exclusively worked with critical pediatric patients, including a significant duration of time caring for [Petitioner]. Furthermore, I hold certification as a public safety

telecommunicator, ensuring efficient communication and response in emergencies.

Now, addressing the concerns raised regarding the necessity of 24/7 private-duty nursing care for [Petitioner], I will provide comprehensive insights into each aspect:

1. [REDACTED]: [Petitioner]'s condition necessitates [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

2. [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

3. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Additionally, several other critical factors warrant the necessity of 24/7 private duty nursing for [Petitioner]:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

See PCE 1 at page 5.

9. Petitioner’s pediatric cardiologist, [REDACTED], M.D. (“[REDACTED]”), wrote a letter dated April 2, 2024, regarding Petitioner’s health status in support of 24-hour nursing services.

The letter states as follows:

I am pediatric cardiologist and [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

I would submit my recent evaluation of [Petitioner] as [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

See PCE 1 at pages 9-10[sic].

10. [REDACTED], Petitioner’s [REDACTED], provided a Nurse hourly schedule (“Nurse Schedule”), as of April 3, 2024. The Nurse Schedule is as follows:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
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- [Redacted]
- [Redacted]
- [Redacted]

- b. In [REDACTED], CMS Medical Directors conducted a periodic medical necessity review of Petitioner's services and agreed that there were not enough skilled nursing tasks performed to continue 24-hour care at 7 days per week. See ¶ 4.
- c. Dr. Metinko explained that the basis for the twelve (12)-hour, seven (7) days per week determination was to ensure coverage of the nocturnal feeding with additional time for pre- or post-feeding assistance. See ¶ 4-5.
- d. Dr. Metinko argued that Petitioner's prescription medications are as-needed only, with [REDACTED] [REDACTED] [REDACTED] [REDACTED] which do not require skilled nursing for administration. Dr. Metinko provided [REDACTED] medical opinion that these medications can be given [REDACTED]
[REDACTED] See ¶ 3.
- e. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] See ¶ 6.
- f. Dr. Metinko opined that Petitioner's [REDACTED].
represented a change to prevent [REDACTED] but there is no explanation why it could not be given as [REDACTED]. See ¶ 6, 10.
- g. [REDACTED]'s prescription did not mention [REDACTED] [REDACTED] [REDACTED]
[REDACTED] See ¶ 6.
- h. Subsequent to the NPAR and prior to the Fair Hearing, Dr. Metinko and the case management team considered extenuating circumstances in this case such as

Petitioner’s therapies received outside the home, additional nursing attendants to accompany during IVIG sessions, and access to emergency services in the rural area. As a result, Sunshine modified the authorization for one hundred and twelve (112) hours per week sixteen (16)-hours per day, at seven (7) days per week, of private duty nursing services.

i. Based on [REDACTED]’s testimony, Dr. Metinko contended that no cardiac interventions, supplemental oxygen, or other respiratory support are ordered [REDACTED] related to Petitioner’s medical conditions. See ¶ 12.

12. [REDACTED] is Petitioner’s pediatric cardiologist. [REDACTED] testified to the following at Fair Hearing:

a. [REDACTED] argued that [REDACTED] follows multiple patients with [REDACTED]
[REDACTED]
[REDACTED].

b. [REDACTED]’s evaluation in [REDACTED]
[REDACTED]
[REDACTED]. See ¶ 9.

c. [REDACTED] argued that skilled nursing in the home for twenty-four (24) hours is medically necessary to cover Petitioner’s [REDACTED]
[REDACTED]
[REDACTED] See ¶ 9.

d. [REDACTED]
[REDACTED].

e. [REDACTED]
[REDACTED]
[REDACTED].

f. [REDACTED] argued that twelve (12) hours of care is insufficient for Petitioner's family to function and provide adequate care for Petitioner.

13. [REDACTED] is Petitioner's [REDACTED]. [REDACTED] testified to the following at Fair Hearing:

a. [REDACTED]
[REDACTED]

b. [REDACTED]
[REDACTED]
[REDACTED]. See ¶ 8.

c. [REDACTED]
[REDACTED]
[REDACTED].

d. [REDACTED]
[REDACTED].

e. [REDACTED] asserted that Petitioner was switched to [REDACTED] due to [REDACTED].

f. [REDACTED] argued that Petitioner had access to only twelve (12) hours per day of private duty nursing services since about [REDACTED].

g. Since [REDACTED], Petitioner's nurses' schedule is typically 7 a.m. to 7 p.m. due to daytime travels.

h. In the nurses' absence, [REDACTED] asserted that [REDACTED].

i. Petitioner's nurses, [REDACTED] and [REDACTED], were providing twenty-four (24) hour care which included [REDACTED].

j. [REDACTED] argued that Petitioner's [REDACTED].

k. [REDACTED].

l. The plan of care states [REDACTED].

See RCE 1 at 16. [REDACTED] disagreed and testified that [REDACTED] has been in constant communication with Petitioner's neurologist regarding [REDACTED].

m. [REDACTED].

14. [REDACTED] is an LPN and Petitioner's caregiver. [REDACTED] testified to the following at

Fair Hearing:

a. [REDACTED] has worked with Petitioner since [REDACTED]. [REDACTED]'s current shift is from 7 a.m. to 7 p.m. on Tuesday, Wednesday, and every other Saturday. [REDACTED] works Sunday, Monday, and every other Saturday.

- b. [REDACTED]'s level of care changes day to day but involves [REDACTED]
[REDACTED]
[REDACTED].
- c. [REDACTED] explained [REDACTED]
[REDACTED].
- d. Petitioner has not missed any dosage of [REDACTED] medications.
- e. [REDACTED]
[REDACTED]
[REDACTED].

15. [REDACTED] is an LPN and Petitioner's caregiver. [REDACTED] testified to the following at Fair Hearing:

- a. [REDACTED] has worked with Petitioner since [REDACTED] as a daytime and nighttime nurse. [REDACTED] is not currently Pediatric Advanced Life Support ("PALS") certified.
- b. [REDACTED]'s described [REDACTED] responsibilities as performing head-to-toe assessments, administering water flushes three times daily, providing nurse-led feeding therapy, wiping down equipment and toys, assisting with ADLs, and monitoring heart rate and oxygen throughout [REDACTED] shift.
- c. [REDACTED] argued that Petitioner has shown signs of [REDACTED].

16. [REDACTED] has been Petitioner's Occupational Therapist since [REDACTED]. [REDACTED] testified that, currently, Petitioner's once-per-week sessions are between 10 a.m. and 1 p.m. in the Petitioner's home. [REDACTED]

17. The Sunshine Health Review of Private Duty Nursing Requests (June 2015) ("FL.UM.26.00") provides as follows in regards private duty nursing services:

PURPOSE:

To establish clinical criteria on which to review requests for private duty nursing services to provide medically necessary, age-appropriate nursing care to eligible members with medical needs beyond a skilled care nursing visit. The services will assist in maintaining the member in their home and community environment, in a safe manner.

...

DEFINITION:

Medically Complex: A member is medically complex if he/she has chronic debilitating diseases or conditions of one or more physiological or organ systems that make the person dependent upon 24-hour per day medical, nursing or health supervision or intervention.

Private Duty Nursing Services: are services that are medically necessary skilled nursing services that can be provided to members under the age of 21 in their home or other authorized settings to support the care required by their complex medical problems and require more extensive and continual care than can be provided through a home health nurse visit. Private duty nursing is furnished for the purposes of performing skilled interventions or monitoring the effects of prescribed treatment.

...

PROCEDURE:

Review Process

To assist in determining the medical necessity of private duty nursing, the clinical criteria established in this policy will be applied. A request for medical necessity review is consistent with Sunshine Health medical policies:

- FL.UM.02.01 - Medical Necessity Review and Continuity of Care

- FL.UM.02.00 - Use of Clinical Criteria
- Any decision to deny, reduce, suspend or terminate services must be made by a Sunshine Health Medical Director as outlined in the policy Use of Clinical Criteria FL.UM.02.00. Determinations and provider notifications will be made according to the expediency of the case as described in FL.UM.05.00 Timeliness of UM Decisions and Notifications.

Specific Clinical Information/Criteria

- I. Services and supplies for medically fragile children include home health and private duty nursing services directly related to their care. It is the policy of Sunshine Health Plan that services for medically fragile children are **medically necessary** when all of the following apply:
 - A. Member is enrolled in a Florida Medicaid Sunshine Health Plan
 - B. Member is under the age of 21 years old
 - C. Member is enrolled in complex case management OR is deemed as medically fragile/medically complex.
 - D. There is a signed plan of care and order for the requested services.

...

Limitations and Exclusions:

...

- Private duty nursing is not covered for respite care. Examples are parent or legal guardian recreation, socialization, and volunteer activities or periodic relief to attend to personal matters unrelated to the medical necessary care of the member.
- Private duty nursing can be covered outside the member's residence if the services are unavailable through other public or private resources, including schools (with documentation of such) and the services are medically necessary while the member is outside his/her home.

...

- Private duty nursing services are not covered in the following locations:
 - Hospitals
 - Nursing facilities
 - Intermediate care facilities for individuals with intellectual disabilities
 - Physician offices
 - Clinics
 - Prescribed pediatric extended care centers
- There are times during the day when skilled interventions are not required for a member receiving private duty nursing services. In these cases, parents or legal guardians must provide assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) for the member, to the fullest extent possible. If parents or legal guardians need training to safely perform these ADL and IADL tasks, the home health provider must provide training and document the methods used to train the parent or legal guardian in the

member's medical record. If the parents or legal guardians are willing and capable of providing more ADL and IADL care, private duty nursing can be authorized to supplement the care provided by those parents or legal guardians.

- Private duty nursing services can be approved for a member whose parent or legal guardian is not available or able to provide ADL or IADL care. Documentation must be provided with a request for private duty nursing services in order to substantiate a parent or legal guardian's inability to participate in the care of the member (i.e., work or school schedules and medical documentation). If a parent or legal guardian is unable to provide a work schedule, a statement attesting to the work schedule must be presented to Sunshine Health when making the request.
- For MMA, CMS, SMI and Child Welfare members, a home health agency can allow payment for up to 40 hours per week of private duty nursing services provided by a parent or legal guardian if that parent or legal guardian has a valid license as a RN or LPN in the state of Florida and is employed by a contracted home health agency. Parents or legal guardians must participate in providing ADL and IADL care to the fullest extent possible and are expected to continue to provide non-reimbursed care as the primary parent or legal guardian.
- . . .
- Approval is not provided for additional private duty nursing hours for the member so that the member's parent or legal guardian who is providing private duty nursing for the member can also work outside the home or for respite. The parent or legal guardian is not eligible to participate in this program if the required care cannot be provided because of a medical condition or disability of the parent or legal guardian.
- The absence of an available care giver does not make the requested services skilled care, and therefore is not criteria used for determining medical necessity of private duty nursing.
- Services that can be provided safely and effectively by a non-clinically trained person are not considered skilled when a non-skilled caregiver is not available.
- **Services that involve payment of family members or nonprofessional caregivers for services performed for the member are not considered as medically necessary for authorization of private duty nursing services.**

See RCE 1 at 71-74. (Emphasis added).

CONCLUSIONS OF LAW

18. The Agency’s Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2), Florida Statutes (2022). This order is the final administrative decision of AHCA under section 409.285(2)(a).

19. This hearing was held as a *de novo* proceeding pursuant to Rule 59G-1.100(17)(b), Florida Administrative Code Rule (“Fla. Admin. Code R.”).

20. With regard to the first issue, because Respondent reduced a previously approved service, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the Respondent. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.)

21. With regard to the second issue, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the Petitioner. Fla. Admin. Code R. 59G-1.100(17)(p) requires that, upon a demand for corrective action, the recipient must submit record evidence of the recipient’s liability or potential liability for payment of the already-provided service.

22. The Florida Medicaid Private Duty Nursing Services Coverage Policy (November 2016) (“PDN Policy”), incorporated by reference in Fla. Admin. Code R. 59G-4.261, governs private duty nursing services available under Florida Medicaid. The PDN Policy provides the following, in pertinent part:

1.1 Description

Florida Medicaid private duty nursing (PDN) services provide medically necessary skilled nursing to recipients whose medical condition, illness, or injury requires the care to be delivered in their home or in the community.

...

1.3 Definitions

The following definitions are applicable to this policy. For additional definitions that are applicable to all sections of Rule Division 59G, F.A.C., please refer to the Florida Medicaid definitions policy.

1.3.6 Medically Necessary/Medical Necessity

As defined in Rule 59G-1.010, F.A.C.

Note: Subparagraph (a)(5) of the medical necessity definition shall not be applied when determining the medical necessity of private duty nursing services. All other medical necessity criteria apply and must be met in order to receive reimbursement from Florida Medicaid

...

3.0 Eligible Provider

3.1 General Criteria

Providers must meet the qualification specified in this policy in order to be reimbursed for Florida Medicaid private duty nursing services.

3.2 Who Can Provide

Services must be rendered by providers meeting one of the following:

- Home health agencies licensed in accordance with section 408.810 F.S., and Rule Chapter 59A-8, F.A.C.
- Licensed practical nurses (LPN) licensed in accordance with Chapter 464, F.A.
- Registered nurses (RN) licensed in accordance with Chapter 464, F.S.

4.0 Coverage Information

4.1 General Criteria

Florida Medicaid reimburses for services that meet all of the following:

- Are determined medically necessary
- Do not duplicate another service
- Meet the criteria as specified in this policy

4.2 Specific Criteria

Florida Medicaid reimburses for up to 24 hours of PDN services per day, per recipient, when the recipient meets all of the following criteria:

- Is under the care of a physician and has a physician's order for PDN services
- Requires more extensive and continual care than can be provided through a home health visit
- Requires services that can be safely provided in their home or the community

...

4.3 Early and Periodic Screening, Diagnostic, and Treatment

As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or

ameliorate a defect, a condition, or a physical or mental illness. Included are diagnostic services, treatment, equipment, supplies, and other measures described in section 1905(a) of the SSA, codified in Title 42 of the United States Code 1396d(a). As such, services for recipients under the age of 21 years exceeding the coverage described within this policy or the associated fee schedule may be approved, if medically necessary. For more information, please refer to Florida Medicaid's General Policies on authorization requirements.

...

5.0 Exclusion

5.1 General Non-Covered Criteria

Services related to this policy are not reimbursed when any of the following apply:

- The service does not meet the medical necessity criteria listed in section 1.0
- The recipient does not meet the eligibility requirements listed in section 2.0
- The service unnecessarily duplicates another provider's service

5.2 Specific Non-Covered Criteria

Florida Medicaid does not reimburse for the following:

- A skill level other than what is prescribed in the physician order and approved POC
- Babysitting
- Certification of the POC by a physician
- Nursing assessments related to the POC
- Professional development training or supervision of home health staff or other home health personnel
- Respite care to facilitate the parent or legal guardian attending to personal matters
- Services funded under section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Educational Act
- Services furnished by relatives as defined in section 429.02(18), F.S., household members, or any person with custodial or legal responsibility for the recipient. (except as described in section 4.2.1)
- Services provided in any of the following locations:
 - Hospitals
 - Intermediate care facilities for individuals with intellectual disabilities
 - Nursing facilities
 - Prescribed pediatric extended care centers
 - Residential facilities or assisted living facilities when the services duplicate those provided by the facility
- Services rendered prior to the development and approval of the POC
- Travel time to or from the recipient's place of residence

7.0 Authorization

7.2 Specific Criteria

Providers must obtain authorization from the Medicaid contracted Quality Improvement Organization (QIO) at least every 180 days, or more frequently if there is a change in the recipient’s condition requiring an increase or decrease in authorized services.

...

7.2.3 Intensified Review

The QIO’s physician peer reviewer will review the authorization request if the multidisciplinary team cannot reach consensus on the amount of PDN service hours to include in the service plan.

The QIO’s physician peer reviewer will review all of the available information collected as a part of the multidisciplinary team process, and attempt to contact the recipient’s physician to discuss the case.

PDN Policy at page 1-5.

23. States must provide Early and Periodic Screening, Diagnostic, and Treatment (“EPSDT”) services to Medicaid-eligible children under age 21 when requested under the Medicaid state plan. See 42 U.S.C. § 1396a(a)(43); 42 U.S.C. § 1396d(a)(4). According to 42 U.S.C. § 1396d(r)(5), EPSDT services mean, in relevant part, the following items and services:

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 illness and conditions discovered by the screen services, whether or not such services are covered under the state plan.

24. Petitioner is under age 21, and therefore EPSDT applies to this request for services. However, a state may place medical necessity limitations on EPSDT services. See 42 C.F.R. §§ 440.230(a), (b), (d). Fla. Stat. § 409.905(2) limits EPSDT services with a medical necessity standard:

The [Agency] shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

25. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

2.83 Medically Necessary or Medical Necessity

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

Definitions Policy at page 7.

Private Duty Nursing Services

26. In the instant case, Petitioner requested continuation of private duty nursing services for twenty-four (24) hours per day, seven (7) days per week, or a total of one hundred sixty-eight (168) hours per week. See ¶ 4. In the NABD, dated December 15, 2023, Respondent reduced Petitioner’s services to a total of eighty-four (84) hours per week. See ¶ 4. Respondent cited the lack of medical necessity as the basis for their decision, specifically that the services must be “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness

under treatment, and not in excess of the patient’s needs.” See ¶ 4. In the NPAR dated January 3, 2024, Respondent upheld its reduction. See ¶ 5. Respondent has the burden of proof to show by a preponderance of evidence that the Respondent’s determination was correct. See ¶ 20.

27. The PDN Policy states that Florida Medicaid reimburses for services that meet all of the following: (1) are determined medically necessary; (2) do not duplicate another service; and (3) meet the criteria specified in the policy. See ¶ 22. The Definitions Policy requires that the services must “[b]e individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs.” See ¶ 25.

28. The record clearly shows that Petitioner requires skilled nursing due to [REDACTED] medical conditions and functional limitations. See ¶ 2, 6, 8-9, 11-15. As demonstrated in the record, Petitioner’s medical history include [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. See ¶

2. The CMS Medical Directors conducted a medical necessity review of Petitioner’s services and agreed that there were not enough skilled nursing tasks performed to justify twenty-four (24)-hour care at seven (7) days per week. See ¶ 4-5, 11. Dr. Metinko explained that although Petitioner previously received twenty-four (24) hours of private duty nursing services in the past, those services were administratively approved without medical necessity review. See ¶ 11.

[REDACTED]

[REDACTED] See ¶ 3.

29. Dr. Metinko argued that Petitioner’s prescription medications are as-needed only, with [REDACTED] which do not require skilled nursing for administration or can be delivered by a parent. See ¶ 11. [REDACTED]

[REDACTED]

[REDACTED] See ¶ 13, 15. [REDACTED] argued that [REDACTED] has been in [REDACTED]. See ¶ 13. [REDACTED]

[REDACTED]

[REDACTED] See ¶ 2.

30. Petitioner’s argument relies heavily on continued monitoring of Petitioner’s health status. See ¶ 8-10, 12-15. As seen in the home health certification and plan of care, Petitioner’s pediatric physician described Petitioner’s medical status as [REDACTED]

sufficient evidence to demonstrate the parents' lack of availability to provide some assistance with ADLs and IADLs or monitoring for Petitioner's needs. See ¶ 13. Petitioner is authorized to receive one hundred twelve (112) hours per week, or alternatively, sixteen (16) hours per day, seven (7) days per week of private duty nursing services. See ¶ 11. The record reflects that one hundred twelve (112) hours per week should be sufficient to meet Petitioner's skilled nursing needs. See ¶ 6, 10, 11. Based on all aforementioned facts, Respondent proved by a preponderance of the evidence that the continuation of private duty nursing services at twenty-four (24) hours per day, seven (7) days per week are "in excess of [Petitioner]'s needs." See ¶ 27-29.

31. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent proved by a preponderance of the evidence that the continuation of the previously approved level of home health (private duty nursing) services does not meet the medical necessity criteria. Looking at all the evidence relevant to the particular needs of this Petitioner, the Respondent demonstrated that the continuation of the previously approved home health (private duty nursing) services is not necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, the undersigned finds that Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Petitioner's home health (private duty nursing) services was correct.

Corrective Action

32. On January 12, 2024, Counsel for Petitioner requested a Fair Hearing to challenge the reduction of private duty nursing services. See ¶ 4. Included with the [REDACTED]

[REDACTED]

See ¶ 4. At Fair Hearing, Petitioner's attorney presented a demand for corrective action asserting that Respondent failed to provide continuation of the 24/7 private duty nursing services since the initial request. See ¶ 4.

33. Petitioner did not provide evidence, such as invoices or receipts, to demonstrate that private duty nursing services were rendered and no payment for such services was provided. See ¶ 19. Petitioner also did not provide any documentation or evidence that Petitioner's [REDACTED] holds a nursing or other health care license. Petitioner stated that "Petitioner's [REDACTED] personally provided one hundred twenty one (121) 12 hour private duty nursing shifts when CMS Sunshine failed to." See PCE 2 at page 26. Petitioner further states "[w]ith 121 unprovided 12-hour shifts which Petitioner's parents personally provided, the going rate for those services at \$26.25 per hour would add up to \$38,115." *Id.* As previously discussed, Respondent's decision to reduce Petitioner's private duty nursing services met medical necessity criteria. See ¶ 26-30. Moreover, the record does not demonstrate that Petitioner's [REDACTED] is an eligible provider. See ¶ 13, 22. Thus, corrective action for payment is not warranted.


34. All in all, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that continuation of the previously approved home health (private duty nursing) services at 24 hours per day, 7 days per week is not medically necessary. Accordingly, the undersigned concludes that corrective action is not warranted.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's reduction of home health services (private duty nursing) is **AFFIRMED**.
Petitioner's appeal based on Respondent's reduction of home health services (private duty nursing) is **DENIED**.

Petitioner's demand for corrective action is **DENIED**.

DONE AND ORDERED this 13th day of May, 2024 in Tallahassee, Leon County, Florida.

 Kimberly Roche
24-FH0156
2024.05.13
08:56:30 -04'00'

KIMBERLY ROCHE, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

COPIES FURNISHED TO:





Craig Smith, Esq.
Counsel for Respondent
craig.smith@hoganlovells.com

Children's Medical Services
CMSPlanContract@flhealth.gov

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com