

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



FILED

May 31, 2024, 3:03 pm
OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 24-FH0182

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 March 20, 2024, at 9:00 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Kimberly Bouchette
Clinical Appeals Coordinator
Sunshine State Health Plan

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for Private Duty Nursing services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. [REDACTED] (" [REDACTED] "), Petitioner's Authorized Representative and [REDACTED], appeared on behalf of the Petitioner.

Kimberly Bouchette, Clinical Appeals Coordinator for Sunshine State Health Care, Inc. (“Sunshine”) appeared on behalf of Respondent. Dr. Andrew Metinko, (“Dr. Metinko”) Medical Director, appeared as a witness for Respondent. The following attended on behalf of respondent but did not testify: Alexa Kegley, Care Manager.

Linda Latson, (“Ms. Latson”) Registered Nurse Specialist for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Joanne White, Theresa Sawyer, Esq., Kaitlyn Levine, Esq., from the Florida Department of Health appeared as observers.

Prior to the hearing, Petitioner sent to the Office of Fair hearings a twenty (20)-page evidence packets. This twenty (20)- page packet appears in the Office of Fair Hearings document management system as file title: “24-FH0182 Additional Supporting Documents.pdf.” Absent any objection from Respondent, the undersigned admitted the twenty (20) page packet as Petitioner Composite Exhibit 1 (“PCE1”)

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and thirty-five (135) page evidence packet. This evidence packet is identified in the Office of Fair Hearings document management system as file titles: “MFH packet [PETITIONER]-Part 1.pdf.” and “MFH packet [PETITIONER] Part 2.pdf.” Absent an objection from the Petitioner undersigned admitted Respondent’s evidence packets into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of CMS since October 1, 2021. See page 2 of RCE 1. CMS is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is [REDACTED] and lives with [REDACTED]. *Id.* at 20.

3. Petitioner is diagnosed with the following conditions: [REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 94, 96.

4. A Home Health Certification and Plan of Care (“POC”) dated October 5, 2023, was submitted by [REDACTED]. According to the POC, Petitioner has the following functional limitations: [REDACTED]. *Id.* at 96.

5. Petitioner’s mental status is as follows: [REDACTED]. *Id.* at 97. The following activities are permitted for Petitioner: [REDACTED]. *Id.*

6. Petitioner requested Private Duty Nursing services. *Id.* at 5-6. In a Notice of Adverse Benefit Determination (“NABD”), dated November 14, 2023, the request was denied. NABD explained the basis of the denial as follows:

We determined that your requested services are not medically necessary because the services do not meet either of the reasons checked below: (*See Rule*)

...

- Must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of your child’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. Florida Medicaid Private Duty Nursing Services Coverage Policy Agency for Health Care Administration. Florida Medicaid Home Health Services Coverage and Limitations Handbook Agency for Health Care Administration.

These services have also been reviewed under EPSDT (Early and Periodic Screening, Diagnostic and Treatment).

Rationale: The request to approve private duty nursing services for your child is denied. This is medical care in the home given by a licensed nurse. It is denied based on a lack of medical need. The clinical notes does not show that your child needs advanced respiratory support (breathing assistance). Your child does not need multiple medications given in the veins. [REDACTED] does not need continuous feedings through a feeding tube. This is a tube in the belly used to give nutrition

[REDACTED] If activity of daily living assistance is needed, then home health aide services could be considered rather than private duty nursing services. Home health aide is a trained health care worker who helps people with daily care needs. Please discuss this decision with your child's Children's Medical Services care manager should you have any questions. This person is trained to assist with this type of request.

Id. at 5-6.

7. Petitioner requested a plan appeal. In a Notice of Plan Appeal Resolution ("NPAR"), dated January 5, 2024, the denial of Private Duty Nursing Services was upheld. *Id.* at 120-121. The NPAR explained as follows:

On 12/11/2023 we received your timely plan appeal request regarding Children's Medical Services Health Plan Notice of Adverse Benefit Determination dated 11/14/2023, NABD Number [REDACTED], denying the service to be provided to [PETITIONER].

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 01/01/2024, 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 service, effective 01/01/2024. The facts that we used to make our decision are: Your request for S9124 Private Duty Nursing (PDN) services was recently denied due to lack of medical necessity. That request was the initial review by a Medical Director, and it was denied because there was not

enough supportive information to justify the medical need for PDN services. Because you appealed that decision, your request was re-evaluated by a second medical director. Based upon this secondary review, the previous denial is upheld. There is not enough information submitted to justify the medical necessity for the requested PDN services. Your child does not have a tracheostomy and is not dependent on a ventilator to breath. [REDACTED] does not have documented supplemental oxygen requirement. [REDACTED] does not require feedings through a gastrostomy tube. [REDACTED] is not bedbound. Your child has diagnoses of [REDACTED]
[REDACTED]
[REDACTED] This frequency is not consistent with the need for PDN services in the home for 12 hours daily, and the services are therefore not considered medically necessary. The reasons for this decision are based on a set of standards. This included FL.UM.26, Review of Private Duty Nursing Requests, the Sunshine Health Member Handbook, Services covered by Sunshine Health, Florida Medicaid, Private Duty Nursing Services Coverage Policy, and/or Florida Medicaid Home Health Visits Service Coverage Policy were referenced in making this decision. This decision was made with regards to Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT).

...

Id. at 120-121.

8. On August 22, 2023, Petitioner requested a Fair Hearing to challenge the denial of Private Duty Nursing services. On September 15, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for September 28, 2023, at 10:00 a.m. Eastern Standard Time. Petitioner requested and was granted a continuance. A Second Order Scheduling Fair Hearing by Telephone and Prehearing Instructions was issued October 18, 2023, setting the hearing for November 30, 2023.

9. [REDACTED] testified to the following:

a. [REDACTED] child has had [REDACTED].

10. Dr. Metinko testified to the following:

a. The child has a complicated diagnosis, and [REDACTED].

- b. The notes do not indicate that private duty nursing services would have prevented the occurrence of any of the child's [REDACTED].
- c. [REDACTED]
[REDACTED].
- d. The current frequency of this child's [REDACTED] is not enough to warrant private duty nursing. Other interventions such as an aide to debulk care tasks from when the child is home from school to bed time or an in-home monitoring system.

11. In making its decision in this case, Respondent relied upon the Sunshine Health Policy and Procedure Review for Personal Care Services, FL.UM.25.00. *Id.* at 119, which states as follows, in pertinent part:

Personal Care Services are services that assist a member with ADLs or IADLs. These services can be provided to members up to the age of 21. Personal care service assistance can be in the form of hands-on assistance (actually performing the task for the member) or cuing along, with supervision, to ensure the member performs the personal care task properly. The personal care services must be prescribed by a treating physician, provided by a home health aide or independent personal care provider, and supervised by a registered nurse if provided through a home health agency, or supervised by the parent or legal guardian if provided by a non-home health agency, or supervised by the member, if the services are provided by a non-home health agency and the member is a legal adult between the ages of 18 up to 21 with no legal guardian

...

Personal Care Services Criteria:

Personal care services are covered for members who are under the age of 21. In order to be considered for approval, the member's treating physician must order the service. The member must meet all of the following criteria:

- Member has a documented medical condition or disability that substantially limits the member's ability to perform their Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL) or has a documented cognitive impairment such as Autism which prevents him/her from knowing when or how to carry out the personal care task.

- Member has a documented functional limitation and evidence is documented
- Member requires more individual and continuous care than can be provided through a home health aide visit
- Member does not have a parent or legal guardian able to provide ADL or IADL care
- Member would normally perform the age-appropriate personal care task without the medical condition or disability, and his/her parent or legal guardian is not able to provide ADL or IADL care

Id.

12. In making is decision in this case, Respondent also relied upon the Sunshine Health Policy and Procedure Review of Private Duty Nursing Requests, FL.UM.26.00, *Id.* at 144-149 which states in pertinent part, as follows:

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.

Private Duty Nursing Benefit:

Private duty nursing (PDN) services provide skilled nursing services for members who are under the age of 21. The services must be provided in the member’s home or other authorized setting to support the care required by the child’s medically complex condition(s).

PDN is considered for members:

- Who have complex medical problems
- Require more extensive and continual care than can be provided through a home health nurse visit

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

Information Required for the Initial Review

The treating provider must submit to Sunshine Health's utilization management department the following information when initially requesting private duty nursing services:

- Signed, completed current Plan of Care (POC)
- Documentation of the member's medically complex condition(s), system and organ function of the member.
...
- Documentation to support reason that the member needs more extensive and continual care than can be provided through a home health nurse visit.
...
- Documentation on why the member needs services in the home, or other approved location.
...
- Information on the member's ADL and IADL needs and level of support needed.
- Summary of other services that are in place for the member in the member's residence or other requested location.
- Clinical documentation on the need for the amount, duration and scope of private duty nursing.

Id.

CONCLUSIONS OF LAW

13. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Fla. Stat. § 409.285(2)(2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

14. This hearing was held as a *de novo* proceeding pursuant to Fla. Admin. Code R. 59G-1.100(17)(b).

15. Because Petitioner is requesting a new service, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. 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.)

16. The Florida Medicaid Personal Care Services Coverage Policy (November 2016) (“PC Policy”) which is incorporated by reference in Fla. Admin. Code R. 59G-4.215, establishes the coverage and provision of personal care services available under the Florida Medicaid program.

The PC Policy states as follows, in pertinent part:

1.1 Description

Florida Medicaid personal care services provide medically necessary assistance, in the home or in the community, with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) to enable recipients to accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability.

...

1.1.2 Statewide Medicaid Managed Care Plans

Florida Medicaid managed care plans must comply with the coverage requirements outlined in this policy, unless otherwise specified in the AHCA contract with the Florida Medicaid managed care plan. The provision of services to recipients enrolled in a Florida Medicaid managed care plan must not be subject to more stringent coverage limits than specified in Florida Medicaid policies.

...

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 Home Health Services

Medically necessary services that can be safely provided to the recipient in their home or in the community that include home health visits (skilled nursing and home health aide services), private duty nursing, and personal care services.

...

4.2 Specific Criteria

Florida Medicaid reimburses for up to 24 hours of personal care services per day, per recipient, in order to provide assistance with ADLs and age appropriate IADLs when the recipient meets the following criteria:

- Has a medical condition or disability that substantially limits their ability to perform ADLs or IADLs and do not have a parent or legal guardian able to provide the required care
- Is under the care of a physician and has a physician's order for personal care 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

...

4.2.1 Parental Responsibility

Florida Medicaid reimburses for personal care services rendered to a recipient whose parent or legal guardian is not able to provide ADL or IADL care, and to supplement care provided by parents and legal guardians. Parents and legal guardians must participate in providing care to the fullest extent possible. Providers must offer training to enable parents and legal guardians to provide care they can safely render without jeopardizing the health or safety of the recipient when needed.

4.2.2 Services Provided by Independent Personal Care Providers

Personal care services provided by independent personal care providers must be:

- Supervised by the parent or legal guardian if provided by a non-home health agency when the recipient is under the age of 18 years.
- Supervised by the recipient, or their authorized representative, if the services are provided by a non-home health agency when the recipient is between the age of 18 and 21 years with no legal guardian.

Early and Periodic Screening, Diagnosis, 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, 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 plan of care (POC)
- Assistance with homework
- Babysitting
- . . .
- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services
- . . .
- 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 when a recipient is enrolled in the Consumer-Directed Care Plus program)
- . . .

Personal Care Services Coverage Policy pages 1-6.

17. The Florida Medicaid Private Duty Nursing Services Coverage Policy (November 2016) ("PDN Policy") which is incorporated by reference in Fla. Admin. Code R. 59G-4.261, establishes the coverage and provision of personal care services available under the Florida Medicaid program. *Id.* at 153-161 The PDN Policy states as follows, 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.

1.1.2 Statewide Medicaid Managed Care Plans

Florida Medicaid managed care plans must comply with the coverage requirements outlined in this policy, unless otherwise specified in the AHCA contract with the Florida Medicaid managed care plan. The provision of services to recipients enrolled in a Florida Medicaid managed care plan must not be subject to more stringent coverage limits than specified in Florida Medicaid policies.

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.

1.3.5 Home Health Services

Medically necessary services that can be safely provided to the recipient in their include home health visits (skilled nursing and home health aide services), PDN, and personal care services.

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

....

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
- For recipients requiring less than two hours of PDN services per day, please refer to the Florida Medicaid home health visits services coverage policy.

....

The initial assessment and all subsequent plan of care (POC) recertification assessments, must be completed by an RN who is employed by the home health agency provider and who is not a relative or member of the recipient’s household. Any other authorized service hours must be provided by a non-relative RN or LPN.

4.2.2. Services Provided by Independent RNs and LPNs

Florida Medicaid reimburses for PDN services rendered by an independent RN or LPN in accordance with 42 CFR 440.70 (b)(1), when there is no home health agency provider available in the area to furnish the care. A physician must direct and monitor the services provided by an independent RN or LPN, and must be available to consult on the recipient's medical condition.

Early and Periodic Screening, Diagnosis, 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 Florida Medicaid may reimburse for some services listed in this section through a different service benefit.

Id.

18. 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.

19. A state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§ 440.230(a), (b), (d). Pursuant to section 409.905(2), Florida Statutes:

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.

20. Once it is determined that EPSDT applies to a request for a service, the Florida Medicaid program determines the amount or necessity for that service based on the State of Florida's published definition of medical necessity. 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 severe 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.

21. The Definitions Policy also provides the following definitions that are relevant to this case:

21.2 Activities of Daily Living (ADLs)

ADLs include:

- Bathing
- Dressing
- Eating (oral feedings and fluid intake)
- Maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control bowel or bladder functions)

- Toileting
- Transferring

2.64 Instrumental Activities of Daily Living (IADLs)

IADLs include:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Medication management
- Money management
- Personal hygiene
- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

Definitions Policy at pages 1 and 6.

22. The Home Health Services Coverage and Limitations Handbook was referenced in the

NPAR and NABD in this case and states as follows, in pertinent part:

Private duty nursing services are medically necessary skilled nursing services that can be provided to recipients under the age of 21 in their home or other authorized settings to support the care required by their complex medical condition.

Private duty nursing is furnished for the purposes of performing skilled interventions or monitoring the effects of prescribed treatment.

23. In the instant case, Petitioner requested Private Duty Nursing Services. In an NABD dated November 11, 2023, Respondent denied Petitioner's request based upon medical necessity. See ¶ 6. Petitioner appealed the decision and in an NPAR dated January 5, 2024, Respondent denied Petitioner's plan appeal. See ¶ 7.

24. Petitioner is under the age of 21, and therefore, EPSDT applies to [REDACTED] request for Private Duty Nursing Services. See ¶ 18-19.

25. The Florida Medicaid program provides coverage to its recipients for home health services, including personal care services and private duty nursing services. See ¶ 11-12, 16-17. Home health services provide “medically necessary skilled nursing and home health aide services to recipients whose medical condition, illness, or injury requires the care to be delivered in their home or in the community.” See ¶ 22. Parents and legal guardians of Medicaid recipients are mandated to participate in providing care to the fullest extent possible. See ¶ 16. These services cannot be authorized for babysitting, companion sitting or leisure activities, escort services, housekeeping, and respite care. *Id.*

26. Private Duty Nursing Services must meet the medical necessity criteria defined in Fla. Admin. Code R. 59G-1.010. See ¶ 20-21. To be medically necessary, the services requested must meet the five criteria set forth in section 2.83 of the Definitions Policy. *Id.* Specifically, the type of service requested, and the quantity of service requested must not be in excess of the recipient’s needs. *Id.*

26. The evidence presented in this case does not reflect that the requested services are warranted. Petitioner requested Private Duty Nursing Services See ¶ 6. This was denied in an NPAR of 2023, explaining that Private Duty Nursing Services were not medically necessary and in excess of Petitioner’s needs. See ¶ 7.

16. Petitioner is a [REDACTED] See ¶2. Petitioner has been diagnosed with [REDACTED] [REDACTED]. See ¶ 3. While Petitioner has the functional limitations on [REDACTED], Petitioner is [REDACTED]

[REDACTED]. See ¶ 4-5. Petitioner can be [REDACTED].
[REDACTED]. *Id.*

17. Dr. Metinko gave credible testimony regarding the [REDACTED] activity that prompted the request for Private duty Nursing. Specifically, though Petitioner has experienced an increase in [REDACTED] activity, Dr. Metinko opined this is not unexpected given Petitioner’s complicated medical profile. Further, Petitioner is [REDACTED] and it is not unusual for [REDACTED] activity to become higher during this time. Finally, there is no indication that Private Duty Nursing would have in any way mitigated or prevented the recent [REDACTED] activity. See ¶ 10.


27. Based on the foregoing, the record shows that Private Duty Nursing would not be “individualized, specific and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment and are in excess of Petitioner’s needs. See ¶ 20-21. Therefore, the record does not demonstrate that the requested services are medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not proven that the services at issue are necessary to correct or ameliorate defect or a physical and mental illness or condition.

28. Upon consideration of Petitioner’s Composite Exhibit 1, Respondent’s Composite Exhibit 1, testimony provided, and applicable policies, the undersigned concludes that Petitioner has not proven by a preponderance of evidence that Respondent’s denial of Petitioner’s request for Private Duty Nursing was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's denial of Private Duty Nursing is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

DONE and **ORDERED** this 31st day of May, 2024, in Tallahassee, Leon County, Florida.

 Lynne Ringers
24-FH0182
2024.05.31
14:17:48 -04'00'

LYNNE RINGERS, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407
Office: (850) 412-3649

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:




Children's Medical Services
CMSPlanContract@flhealth.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com

