



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

**FILED**  
Jul 19, 2024, 11:57 am  
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 24-FH1373

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 July 9, 2024, at 9:04 a.m. Eastern Standard Time ("EST").

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Chantal Pierre

Plan Representative

Children's Medical Services

**STATEMENT OF ISSUE**

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for one-hundred sixty-eight (168) hours per week of Private Duty Nursing services was correct.

**PRELIMINARY STATEMENT**

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

Chantal Pierre, (“Ms. Pierre”) Plan Representative for Children’s Medical Services, (“CMS”), appeared on behalf of Respondent. Dr. Andrew Metinko, M.D. (“Dr. Metinko”) Medical Director for CMS, appeared as a witness for Respondent. Ruth Morales, (“Ms. Morales”), appeared on behalf of CMS, was placed under oath, but did not testify. The following attended on behalf of Respondent but did not testify: Dawn Bielawski, Naomi Tillis, and Aldria White-Futrell.

Lee Ann Williams, (“Ms. Williams”) Medical Health Care Program Analysis for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Petitioner did not submit any documents for evidence to the Office of Fair Hearings.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and five (105)-page evidence packet. This evidence packet is identified in the Office of Fair Hearings document management system as file titles: “MFH packet [Petitioner’s Name].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. 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].

*Id.* at 40. [REDACTED]

[REDACTED]

3. Petitioner is diagnosed with the following primary health conditions: [REDACTED]

[REDACTED] *Id.* at 77.

4. According to the Service Authorization Summary, dated April 9, 2024, Petitioner (recipient) needs assistance with all ADLs, to wit: [REDACTED]

[REDACTED]. Petitioner is [REDACTED]

[REDACTED] *Id.* at 77, 87, and 89. Petitioner has assistance all of the time with [REDACTED]

[REDACTED]. *Id.* Petitioner does receive [REDACTED]

[REDACTED].

*Id.* at 91.

5. Instrumental Activities of Daily Living (“IADLs”) are not age relevant for this recipient at this time.

6. Petitioner requested one hundred and sixty-eight (168)-hours per week of Private Duty Nursing services. Respondent initially approved eighty-four (84) hours of private duty nursing services and denied the remaining eighty-four (84)-hours requested for private duty nursing services. In a Notice of Adverse Benefit Determination (“NABD”), dated April 12, 2024, the request was denied. *Id.* at 4-5. NABD explained the basis of the denial as follows:

We determined that the requested services are not medically necessary because the services do not meet the reasons 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 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. This decision was made with regards to Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT).

Rationale: The request to approve private duty nursing services for 168 hours per week is partially approved and partially denied. Private duty nursing services are medical care given in the home by a trained and licensed nurse. We are approving 84 hours per week based upon medical necessity. We are denying the additional 84 hours per week. [REDACTED]

[REDACTED] Your child does not need many medicines given in the veins. [REDACTED] does have a feeding tube, but there is no note stating [REDACTED] needs non-stop feedings 24 hours per day, 7 days a week.

*Id.*

7. Petitioner requested a plan appeal regarding the denial of the eight-four (84) hours per week of private duty nursing. In a Notice of Plan Appeal Resolution (“NPAR”), dated April 24, 2024, Respondent partially approved the plan appeal and increased service hours to one hundred and twelve (112)-hours per week or 16 hours per day for 7 days a week. *Id.* at 57-58. The NPAR explained as follows:

On 04/22/2024 we received your timely plan appeal request regarding Children’s Medical Services Health Plan Notice of Adverse Benefit Determination dated 04/12/2024, NABD Number [REDACTED], denying the service to be provided to [Petitioner’s name].

On 04/23/2024, 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 partially approves your plan appeal. As a result, [Petitioner’s Name] will receive 16 hours/7 days a week of PDN, effective 04/23/2024.

The facts that we used to make our decision are: the reconsideration request for the partial approval of PDN is partially approved and partially denied. Approval is granted for 16 hours/ 7days a week. The additional 56 hours is denied for lack of medical necessity. [REDACTED] letter of medical necessity and clinical notes reviewed. Your child is diagnosed with [REDACTED] Member attends school with a nurse Tues-Thur. [REDACTED] attends therapies on M and F. Member receives [REDACTED]

[REDACTED] There is insufficient support for the overnight skilled nursing care at this time or 24/7

PDN. The reasons for this decision are based on a set of standards. This includes Criteria: Review of Private Duty Nursing Request, POLICY ID: FL.UM.26.00. This decision was made with regards to EPSDT.

...

*Id.*

8. On April 25, 2024, Petitioner requested a Fair Hearing to challenge the denial of Private Duty Nursing services. On May 31, 2024, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for July 9, 2024, at 9:00 a.m. Eastern Standard Time.

9. Dr. Metinko testified to the following:

a. This recipient of Medicaid services is a [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The primary skilled nursing services the recipient receives are administration of [REDACTED]. Dr. Metinko testified that these services are not strictly skilled nursing services in that parents or caregivers can be trained and participate in [REDACTED]

[REDACTED] This member (recipient) has been receiving 24/7 private duty nursing services since [REDACTED]. At that time, the private duty nursing services were administratively approved. There have been five (5) subsequent reauthorizations of services all done as administrative approvals. With the request for reauthorization of services in [REDACTED], the review was based upon the conditions of medical necessity. Thus, the services provided from November 2021 through December 2023 had been based on

administrative approval and not upon an examination of medical necessity criteria. While the [REDACTED] authorization was under review, a new authorization request was made and the 24/7 services were administratively approved from February 12, 2024, until April 21, 2024. The next review for authorization was done on April 22, 2024, by Dr. Samerson as a medical directors' review for medical necessity. Dr. Samerson's review resulted in a recommendation of private duty nursing services of 12 hours per day, 7 days a week. Dr. Samerson's review stated that the recipient did not require continuous overnight feeds, there were no respiratory requirements or ventilator use, and there are no IV medications. Because these types of medical interventions are not required, Dr. Samerson found that 24-hours private nursing services were not necessary.

- b. Dr. Samerson's decision was appealed. The appeal was referred to a different medical director, Dr. Tanpattana, M.D. Dr. Tanpattana partially overturned Dr. Samerson's decision by increasing services to 16 hours per day, 7 days a week. Dr. Tanpattana decision was based on a combination of factors including that when the recipient attends school, a nurse is required to accompany him during that time.
- c. Dr. Metinko testified that [REDACTED], recipient's [REDACTED], had filed a statement of [REDACTED] work hours. [REDACTED] works outside the home from 5:00 p.m. until 10:00 p.m. Monday through Friday and from 11:00a.m. until 11:00 p.m. on Saturday and Sunday. Dr. Metinko testified that the 16 hours per day provided sufficient

coverage for the time that the recipient was in school and during the [REDACTED]'s work hours. Dr. Metinko testified that the authorized hours can be set during the day or evening or overnight hours as [REDACTED] may decide. Further, the available 16 hours would be more than enough to cover the 12-hour workdays on Saturday and Sunday.

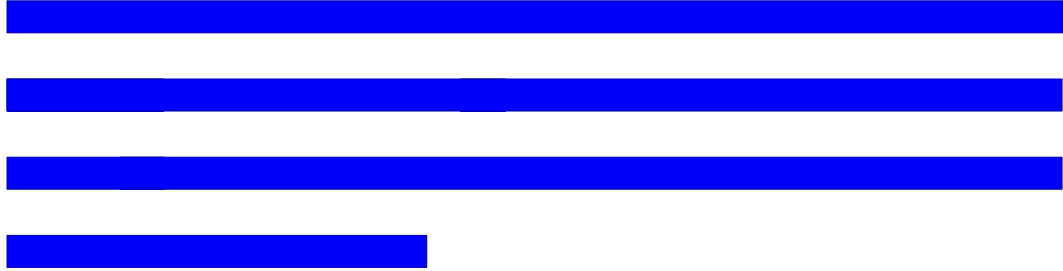
d. Dr. Metinko opined that the 16 hours per day for 7 days a week would be sufficient to provide for the recipient's skilled nursing needs. The hours requested beyond the 16 hours per day for 7 days a week would be in excess of the patient's needs and therefore not medically necessary.

10. [REDACTED] testified as to the following:

a. [REDACTED] testified that [REDACTED] does not [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

b. [REDACTED] indicated that the [REDACTED]  
[REDACTED]  
[REDACTED]

c. [REDACTED] testified that [REDACTED] had worked hard to provide for [REDACTED] and [REDACTED].  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].



11. In making its decision in this case, Respondent relied upon the Sunshine Health Policy and Procedure Review of Private Duty Nursing Requests, FL.UM.26.00, *Id.* at 96-101 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**

12. 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).

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

14. Because Respondent is reducing a previously authorized service, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to 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.)

15. 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.

16. 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 private duty nursing services available under the Florida Medicaid program. 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 home or in the community that 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. The Review of Private Duty Nursing Requests was referenced in the NABD and NPAR in this case and states as follows, in pertinent part:

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. *Id.* at 96.

22. In the instant case, Petitioner requested Private Duty Nursing Services. In an NABD dated April 12, 2024, Respondent denied Petitioner's request based upon medical necessity. See ¶ 6. Petitioner appealed the decision and in an NPAR dated April 23, 2024, Respondent denied Petitioner's plan appeal. See ¶ 7.

23. Petitioner is under the age of 21, and therefore, EPSDT applies to [REDACTED] request for Private Duty Nursing Services. See ¶ 17-18.

24. The Florida Medicaid program provides coverage to its recipients for home health services, including personal care services and private duty nursing services. See ¶ 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 ¶ 15. Parents and legal guardians of Medicaid recipients are mandated to participate in providing care to the fullest extent possible. See ¶ 15. These services cannot be authorized for babysitting, companion sitting or leisure activities, escort services, housekeeping, and respite care. *Id.*

25. Private Duty Nursing Services must meet the medical necessity criteria defined in Fla. Admin. Code R. 59G-1.010. See ¶ 16, 19. 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 NABD dated April 12, 2024 and NPAR dated April 23, 2024, explaining that Private Duty Nursing Services in the amount requested by Petitioner were not medically necessary and in excess of Petitioner’s needs. See ¶ 7.

27. ██████ testified on behalf of ██████. ██████ did not identify what skilled nursing services, if any, would go unperformed if the private duty nursing services were reduced from 24/7 to the suggested 16/7. ██████ testified generally that ██████ did not believe that ██████ would be able to continue working at ██████ current level

of employment if the services were reduced. [REDACTED] did not identify what services [REDACTED] would need to assume that would cause [REDACTED] to reduce or lose [REDACTED] employment. See ¶ 10.

28. Dr. Metinko gave credible testimony regarding the request for private duty nursing. Dr. Metinko testified that three (3) medical doctors had reviewed the recipient's case. Dr. Samerson, senior medical director, conducted the initial review. Dr. Tanpattana, board certified in pediatrics, made the appeal review. And Dr. Metinko, who specializes in pediatrics, prepared the recipient's case for the Fair Hearing. Dr. Metinko testified that based upon the medical conditions and medical needs of the recipient, along with the reported work schedule of [REDACTED] and [REDACTED] availability, that the recommended 16 hours per day, 7 days a week would meet all of the recipient's skilled nursing needs at this time. Dr. Metinko did not identify any gaps in skilled nursing services for the recipient if services were reduced from 24/7 to 16/7. Dr. Metinko opined that skilled nursing services beyond 16 hours per day, 7 days a week would be in excess of the patient's needs and therefore not medically necessary. See ¶ 9.

29. 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 ¶¶ 6, 7, & 9. 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.

30. Upon consideration of Respondent's Composite Exhibit 1, testimony provided, and applicable policies, the undersigned concludes that Respondent has proven by a preponderance of evidence that Respondent's denial of Petitioner's request for one hundred and sixty-eight (168)-hours of Private Duty Nursing was correct.


**IT IS THEREFORE ORDERED AND ADJUDGED THAT:**

Respondent's denial of one hundred and sixty-eight (168)-hours of Private Duty Nursing services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

**DONE** and **ORDERED** this 19<sup>th</sup> day of July, 2024, in Tallahassee, Leon County, Florida.

George L. Winslow,

Jr.



24-FH1373

2024.07.19 10:21:37

-04'00'

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**GEORGE WINSLOW, 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:**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Children's Medical Services**  
**CMSPlanContract@flhealth.com**

**AHCA Medicaid Hearing Unit**  
**MedicaidHearingUnit@ahca.myflorida.com**

