



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

FILED

Oct 10, 2024, 11:41 am

[Redacted]

PETITIONER,

AHCA Case No.: 24-FH2108

OFFICE OF FAIR HEARINGS

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on September 18, 2024, at 9:04 a.m. EST.

APPEARANCES

For the Petitioner:

[Redacted]

Petitioner's Authorized Representative

For the Respondent:

Marielisa Amador
Medical Health Care Provider Analyst
Fair Hearing Liaison
Agency for Health Care Administration

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's behavior analysis ("BA") services was incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. Petitioner's Authorized Representative and [REDACTED], [REDACTED], ("[REDACTED]"), appeared and testified on behalf of [REDACTED]. [REDACTED], BCBA appeared and testified on behalf of the Petitioner. [REDACTED], (spelling may be incorrect due to background noise on the phone line at the time of the hearing) ("[REDACTED]") was placed under oath but was not called as a witness. [REDACTED] attempted to testify after the Hearing Officer had concluded and closed the hearing.

Marielisa Amador, Medical Health Care Provider Analyst and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA") appeared on behalf of Respondent. Dr. Alissa Conway, ("Dr. Conway") Board Certified Behavior Analyst at the doctoral level (BCBA-D) and second level reviewer for eQHealth Solutions, Inc. ("eQHealth"), attended as a witness for Respondent.

Olga #244088 appeared and was sworn in to provide Spanish/English translation.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a one hundred and eighty-eight (188)-page evidence packet. The packet appears in the Office of Fair Hearings' case management system as "24-FH2108 Supporting Documents.pdf." Absent an objection from the Respondent, the undersigned admitted the evidence packet into evidence as Petitioner's Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and six (206)-page evidence packet. The packet appears in the Office of Fair Hearings' case management system as "[REDACTED] FH 07.23.2024 1-76.pdf," "[REDACTED] FH 07.23.2024 77-122.pdf," "[REDACTED] FH 07.23.2024 123-167.pdf," and "[REDACTED] FH 07.23.2024 168-206.pdf."

Absent an objection from the Petitioner, the undersigned admitted the evidence packet into evidence as Respondent's Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a forty-nine (49)-page evidence packet. The packet appears in the Office of Fair Hearings' case management system as "24-FH1491 AHCA Evidence (Pages 1-49 of 49).pdf." Absent an objection from the Petitioner, the undersigned admitted the evidence packet into evidence as Respondent's Composite Exhibit 2.

FINDINGS OF FACT

1. Petitioner receives Medicaid services on a fee-for-service basis from the Agency. eQHealth is a Quality Improvement Organization contracted by the Agency to review prior authorization requests for services. *See* Respondent's Composite Exhibit 2 at page 2.

2. Petitioner is [REDACTED]. *See* Respondent's Composite Exhibit 1 at page 9. The Petitioner has been diagnosed with [REDACTED]. *Id.* at 142. The Petitioner has exhibited maladaptive behaviors including [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. *Id.* at 146.

3. Petitioner requested the following BA services: 4,160 units of code 97153, 524 units of code 97155, and 300 units of code 97156 for the certification period of June 17, 2024, through December 13, 2024. *Id.* at 18.

4. On June 19, 2024, Respondent issued a Notice of Outcome ("NOO"), denying Petitioner's BA services. *Id.* at 18-19. The NOO explained the basis for the denial as follows:

[T]he requested services are not medically necessary under the following standard(s):

Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs.
Consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.
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.

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The NOO further provided:

Submitted information does not support the medical necessity for requested frequency and/or duration.

PR Clinical Rationale – Denial: There are caregiver goals listed that do not meet medical necessity criteria (data collection). All goals must include those to address recipient behaviors/skill deficits that significantly interfere with normal functioning by threatening access to typical environments and negatively affecting activities of daily living.

The information submitted does not meet standards of care within the field of behavior analysis. According to the Florida Medicaid State Plan (page 7, 6.2.2), assessment results must be present in the plan. The provider has included data and graphs for skill acquisition goals and maladaptive behaviors that were based on parent report, estimated or extrapolated average and sourced from indirect interview; and were not directly observed or measured as standards of care within the field of behavior analysis. This request is denied.

Id. at 18-19.

5. Petitioner requested reconsideration of the Respondent's decision. On June 27, 2024, Respondent issued a Notice of Reconsideration Determination ("NRD") upholding its decision. *Id.* at 30-31. The NRD states, in pertinent part as follows:

Specifically, 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.
Consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.

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.

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PR Recon Determination: At reconsideration all documents were carefully reviewed. The information submitted does not meet standards of care within the field of behavior analysis. According to the Florida Medicaid State Plan (page 7, 6.2.2), assessment results must be present in the plan. The provider has included data and graphs for skill acquisition goals and maladaptive behaviors that were based on parent report, estimated or extrapolated average and sourced from indirect interview; and were not directly observed or measured as standards of care within the field of behavior analysis. This denial is upheld.

Id. at 30-31.

6. [REDACTED] testified on behalf of [REDACTED]. [REDACTED] stated that [REDACTED] needs help for [REDACTED]. [REDACTED] stated that [REDACTED] wanted the services to be approved for [REDACTED]. [REDACTED] needs the services because [REDACTED] is [REDACTED].
[REDACTED]
[REDACTED]
[REDACTED].

7. Dr. Conway requested the opportunity to ask some cross examination questions. First Dr. Conway asked [REDACTED] about the assessment before the treatment plan was prepared. Dr. Conway inquired when the assessment was done. [REDACTED] indicated that it was done on [REDACTED]. Dr. Conway inquired what happened during the assessment. [REDACTED] stated that the [REDACTED] was [REDACTED]. [REDACTED] stated that the assessment was done by a neurologist and also a speech therapist and occupational therapist. Again, Dr. Conway clarified [REDACTED] question that [REDACTED] was asking about the ABA assessment

and did anyone come to [REDACTED]'s home for an assessment of the child. [REDACTED] testified that [REDACTED] come to [REDACTED] home for the assessment. Dr. Conway inquired what happened during that assessment. [REDACTED] was observing and asking questions of [REDACTED]. Dr. Conway asked how long did the assessment last and [REDACTED] stated about three (3) hours.

8. Next, the Petitioner called [REDACTED] to testify. [REDACTED] stated that [REDACTED] had [REDACTED] observations and then submitted the treatment plan in the [REDACTED]. The plan was denied. After the denial of the treatment plan, [REDACTED] submitted a three (3) page response to the denial. After sending in [REDACTED] response, [REDACTED] asked what [REDACTED] needed to change in order to get the services approved for the family. Dr. Conway had no cross examination for [REDACTED] and no additional witnesses were called by the Petitioner.

9. Dr. Conway established that eQHealth reviews behavior analysis cases to ensure that providers are giving quality care consistent with the standards enumerated in the BA Policy as well as professional medical standards of applied behavior analysis ("ABA"). eQHealth reviewed the Treatment Plan submitted in this case to determine whether all five (5) conditions of medical necessity are met. Dr. Conway asserted that Petitioner's services were denied because the treatment plan is not consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational and therefore does not meet the conditions of being medically necessary.

10. Dr. Conway explained the review process that is followed by eQhealth. In this review, Dr. Conway testified that the 1st level reviewer found that the recipient had been diagnosed with autistic disorder and the provider was requesting 48 hours per week of services. *Id.* at 13. The first level reviewer could not approve the requested services based upon the information

submitted. The first level reviewer recommended the request be sent to a second level review. The second level reviewer is a Board-Certified Behavior Analyst at the doctoral level (BCBA-D). Dr. Conway testified that the second reviewer wrote that the treatment plan included data and graphs for skill acquisition goals and maladaptive behaviors that were based on parent report, estimated or extrapolated average and sourced from indirect interview; and were not directly observed as required by the standards of care within the field of behavior analysis. The second reviewer denied the request for services. *Id.* at 14. A request was made for reconsideration and a third reviewer reconsidered the previous denial. The third reviewer is also a Board-Certified Behavior Analyst at the doctoral level (BCBA-D). Dr. Conway testified that after making a complete review of all documentation submitted for the reconsideration, the third reviewer found that the treatment plan was based upon data and graphs that included parent report, estimated or extrapolated average and sourced from indirect interview; and not directly observed as required by the standards of care within the field of behavior analysis. The prior denial was upheld. *Id.* at 14.

11. Dr. Conway testified that an effective treatment plan must be built upon a properly conducted assessment. The assessment forms the foundation from which all other action in the treatment plan is determined. If the assessment is found to not meet the requirements of medical necessity, future actions based upon that assessment may be flawed as well.

12. Dr. Conway pointed to several conflicts in the testimony concerning the assessment process. [REDACTED] testified that the assessment took place over [REDACTED] different dates and took about three hours. However, [REDACTED]'s testimony also seemed to include that [REDACTED] was referring to an assessment by a neurologist and a speech and occupational therapists. Also, later

in the testimony, ██████████ referred to a third assessment that was done by the school system. The treatment plan submitted for consideration stated that the assessment was completed over ██████ different days at 3 hours each day. *Id.* at 145. ██████████ testified that the assessment was conducted over ██████████ observation periods. Dr. Conway also testified that Medicaid had authorized under code 97151 a total of six (6) hours for the lead analyst to conduct and prepare the assessment for the recipient.

13. In addition to reviewing the assessment process, Dr. Conway also reviewed the written response submitted by ██████████ when the treatment plan was denied. ██████████ made reference to ██████ written response during ██████ testimony. The response is found at pages 89-91 of Respondent's Composite Exhibit 1. Dr. Conway directed ██████ testimony to paragraph 4, found at the bottom of page 91. This paragraph refers to the observation during the assessment and the data collection. ██████████ stated that "Data has been collected by the lead analysts and the family." Dr. Conway took exception to this method of observation and data collection. As Dr. Conway testified, the assessment forms the foundation of the treatment plan and the process by which treatment shall be implemented. It is absolutely imperative that the assessment be conducted by an individual specifically trained in ABA process. Only through proper training can maladaptive behaviors be identified, their function determined, and the proper skill replacements identified for the recipient. Without ABA training, an observer may not recognize specific aspects of an individual's behavior and may not include data that is helpful in completing a Treatment Plan. Dr. Conway testified that all observations and data collection should be done by an individual trained in ABA procedures.

14. As previously mentioned, several different assessments were made by several different individuals. First, [REDACTED] spoke of the assessment by a neurologist. The assessment by the neurologist may help form a medical diagnosis or identify a medical concern, however, such assessment is not intended to form the basis of an ABA treatment plan. Dr. Conway stated that a medical assessment and an ABA assessment serve different end purposes. Also, mention was made of a school assessment for this recipient. As testified to by Dr. Conway, a public-school IEP (individual education plan) may also be an assessment of an individual with maladaptive behaviors, however the purpose of such assessment is for establishing an education plan for an individual that may face learning difficulties. The educational assessment is not for the purpose of establishing a treatment plan of an individual with maladaptive behaviors. While each of these assessments may have some similar goals, only a properly completed ABA assessment can form the basis of a treatment plan for an individual that needs ABA services.

15. Dr. Conway testified that based upon the uncertainty of the assessment process as outlined above and that some of the assessment observation and data collection was done by the recipient's family, the assessment and treatment plan do not meet the criteria of medical necessity. The assessment and the treatment plan are not consistent with the generally accepted medical professional standards as determined by the Medicaid program, and not experimental or investigational. Thus, as the assessment/treatment plan does not meet the medical necessity criteria, the request for services is denied.

CONCLUSIONS OF LAW

16. 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 (2019). This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

18. Because the Petitioner was seeking a new service, Fla. Admin. Code R. 59-1.100(17)(g) assigns the burden of proof to the 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.).

19. 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).

20. 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.

21. A state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§ 440.230(a), (b), (d).

22. Section 409.905(2), Florida Statutes, 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.

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

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 (This requirement applies only to recipients age 21 or older)
- 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.

Respondent’s Composite Exhibit 2 at page 23 / Definitions Policy at page 7.

24. The Florida Medicaid Behavior Analysis Services Coverage Policy (September 2023) (“BA Policy”), incorporated by reference in Fla. Admin. Code. R. 59G-4.125, governs BA services available under Florida Medicaid. The BA Policy provides as follows:

1.0 Introduction

Behavior analysis (BA) services are highly structured interventions, strategies, and approaches provided to decrease maladaptive behaviors and increase or reinforce appropriate behaviors.

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1.4.6 Medically Necessary/Medical Necessity

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

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2.0 Eligible Recipient

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2.2 Who Can Receive

Florida Medicaid recipients under the age of 21 years requiring BA services that are medically necessary to address behavior that impairs a recipient's ability to perform a major life activity. Such functional impairment is expressed through the following behaviors:

- Safety – aggression, self-injury, property destruction, elopement
- Communication – problems with expressive/receptive language, poor understanding or use of non-verbal communications, stereotyped, repetitive language
- Self-stimulating – abnormal, inflexible, or intense preoccupations
- Self-care – difficulty recognizing risks or danger, grooming, eating, or toileting
- Other behaviors not identified above but not limited to complexity of treatment, programming, or environmental variables

The recipient must be referred by an independent physician or practitioner qualified to assess and diagnose disorders related to functional impairment, including:

- Primary care physician with family practice, internal medicine, or pediatric specialty
- Board certified or board eligible physician with specialty in developmental behavioral pediatrics, neurodevelopmental pediatrics, pediatric neurology, adult or child psychiatry
- Child psychologist

The referral must include a comprehensive diagnostic evaluation (CDE) performed according to national evidence-based practice standards. CDEs may be performed by a multidisciplinary team or individual practitioner. In either case, the CDE must be led by a licensed practitioner working within their scope of practice. The CDE must include assessment findings and treatment recommendations appropriate to the recipient. For example, the CDE may include data from behavioral reports by parents, guardians, and/or teachers; diagnostic testing related to recipients' development, behavior, hearing, and/or vision; genetic testing; and/or other neurological and/or medical testing.

Some services may be subject to additional coverage criteria as specified in section 4.0.

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4.0 Coverage Information

4.1 General Criteria

Florida Medicaid covers 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 covers the following BA services in accordance with the applicable Florida Medicaid fee schedule(s), or as specified in this policy:

4.2.1 Behavior Assessment and Behavior Plan

A behavior assessment must be conducted prior to the initiation of behavior analysis interventions. The assessment must identify behavioral deficits that interfere with a major life activity including the events and subsequent interactions that elicit and sustain targeted behavior.

The initial assessment must include the administration, scoring, and reporting of two core standardized behavior instruments, as follows:

- Vineland-3 Comprehensive Parent Interview Form Including Maladaptive Behavior Domain, for all recipients
- Behavior Assessment System for Children, Third Edition, Parenting Relationship Questionnaire (BASC-3 PRQ), for all recipients 2 years old and less than 19 years old

The complete scoring report, including outcome measure scores, must be submitted with service prior authorization requests. Additional assessment tools may be used at the Lead Analyst's discretion.

The behavior plan identifies intervention strategies that are likely to eliminate, mitigate or replace the behavior to produce change sufficient to reengage the recipient in the major life activity. The plan must include specific behavior goal(s), intervention strategies for each goal, anticipated timeframes that are of sufficient duration to address the targeted behavior, and how the ongoing progress of intervention strategies will be reported.

The behavior plan must reflect the requested authorization period (up to six months).

A reassessment and updated behavior plan to renew prior authorization for continued services must be completed at least every six months. The core instruments must be included with reassessments every 12 months.

More frequent assessments must be conducted when:

- New behavior emerges that interferes with a recipient's participation in a major life activity
- Additional BA services are medically necessary and are likely to address the emergent behavior

A full reassessment may be requested if there is a change in provider; however, a change of a practitioner status (e.g., an RBT becoming certified as a BCaBA) is not grounds for conducting a reassessment or updating a behavior plan.

4.2.2 Behavior Analysis Interventions

Florida Medicaid covers up to 40 hours per week of BA intervention services as indicated in the recipient's prior-authorized behavior plan. These services must be delivered to reduce maladaptive behaviors and assist the recipient reach the best possible function level for that individual. Services include:

- Adaptive behavior treatment by protocol - behavior analysis services provided according to the authorized treatment protocol
 - o Services may be provided by Lead Analyst, BCaBA, or RBT
- Adaptive behavior treatment with protocol modification – behavior analysis services provided with modifications to the authorized treatment protocol to address behavior and/or response changes or progress
 - o Services may be provided by Lead Analyst or BCaBA
- Group adaptive behavior treatment by protocol – behavior analysis services provided in a group setting according to the authorized treatment protocol
 - o Maximum group size is six recipients
 - o Services may be provided by Lead Analyst, BCaBA, or RBT
- Group adaptive behavior treatment with protocol modification – behavior analysis services provided in a group setting with modifications to the authorized treatment protocol to address behavior and/or response changes or progress
 - o Maximum group size is six recipients
 - o Services may be provided by Lead Analyst or BCaBA
- Family adaptive behavior treatment guidance – parent, guardian, and/or caregiver training on the implementation of the behavior plan and intervention strategies
 - o The recipient may or may not be present depending upon clinical appropriateness.
 - o Services may be provided by Lead Analyst or BCaBA
 - o The Lead Analyst may provide up to two hours per week of training to parents or guardians via telemedicine in accordance with Rule 59G-1.057, Florida Administrative Code (F.A.C.)

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4.2.4 Discharge

Recipients receiving Florida Medicaid BA services who meet one or more of the following will be considered for discharge from services:

- The recipient is no longer eligible for BA services as outlined in the Florida Medicaid Behavior Analysis Services Coverage Policy, incorporated by reference in Rule 59G-4.125, F.A.C.

- The recipient no longer meets medical necessity criteria as defined in Rule 59G-1.010, F.A.C.
- The recipient no longer engages in maladaptive behaviors.
- Data indicates the frequency and severity of maladaptive behavior(s) or level functional impairment no longer poses a barrier to the recipient's ability to function in his/her environment.
- The level of functional impairment as expressed through behaviors no longer justifies continued BA services.
- Parent or guardian withdraws consent for treatment

4.3 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 sectioned 1905(a) of the Social Security Act, 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 Authorization Requirements Policy.

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5.0 Exclusion

5.1 General Non-Covered Criteria

Services related to this policy are not covered 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 cover the following as part of this service benefit:

- Any procedure or physical crisis management technique that involves the use of seclusion or manual, technical, or chemical restraint utilized to control behaviors
- Services for the delivery of recipient supervision, personal care assistance (e.g., acting as a 1:1 aid), companion, chaperone, or shadow regardless of activity or setting. This may include supports and services that are reimbursed through a different Florida Medicaid service benefit or are able to be provided by individuals without professional skills or training.
- Caregiver or childcare services
- Psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, or long-term counseling
- Services funded under section 110 of the Rehabilitation Act of 1973

- Services not listed on the fee schedule
- Services on the same day as behavioral health overlay services*
- Services on the same day as therapeutic behavioral on-site services*
- Services on the same day as therapeutic group care services*
- Services provided simultaneously by more than one BA provider, unless determined to be medically necessary, prior authorized, and indicated in the approved behavior plan
- Travel Time

* These services include behavior analysis treatment.

Florida Medicaid may cover some services listed in this section through a different service benefit.

6.0 Documentation

6.2 Specific Criteria

Providers must maintain the following documentation in the recipient's file:

6.2.1 Referral Information

Original referral documentation must be maintained in the recipient's medical record.

6.2.2 Behavior Assessment and Behavior Plan

The behavior assessment and behavior plan must be signed by the Lead Analyst and the recipient's parent or guardian. Each behavior assessment and behavior plan must include:

- Patient information
- Reason for referral
- Medical and developmental history, including medications prescribed to ameliorate behaviors
- Relevant family history
- Clinical interview
- Review of recent assessments/reports (file review)
- Assessment procedures and results
- Behavior plan
 - Treatment setting(s)
 - Proposed treatment targets, goals, and objectives related to medically necessary behavioral interventions
 - For each:
 - Definition in observable, measurable terms
 - Direct observation and measurement procedures
 - Current level (baseline)
 - Behavior reduction or acquisition procedures
 - Condition(s) under which behavior is to be demonstrated and mastery criteria
 - Date of introduction
 - Estimated date of mastery

- Plan for generalization
 - Timely reporting of progress, including statements as to whether goal or objective is met; not met; or, modified (with explanation)
- Parent/guardian/caregiver training
 - Proposed targets, goals, and objectives (as above)
 - Training procedures
 - Date of introduction
 - Estimated date of mastery
- Number of units requested
 - Number of units for each billing code
 - Medical necessity for units requested
- Supervision plan, including name(s) of authorized supervisor(s)
- Care coordination with parents/caregivers, schools, state disability programs, and others as applicable
- Transition (fading) plan
- Crisis management plan
- Discharge plan

6.2.3 Assessment and Behavior Plan for Reauthorization and Continuation of Services

In addition to the documentation requirements indicated in 6.2.2, subsequent assessments and behavior plans for reauthorization and continuation of services must include:

- Data reflecting progress of all behaviors targeted for improvement. Each behavior under treatment must have its own data table and corresponding graph.
- A narrative discussion of progress and a statement of justification for continuation of care at the intensity level requested

If significant clinical progress is not made over the course of an authorized period, the provider must explain why clinically significant progress was not made and treatment changes to promote progress.

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Pages 1 – 8 of BA Policy.

25. The Florida Medicaid Authorization Requirements Policy (“Authorization Policy”),

incorporated by reference in Fla. Admin. Code R. 59G-1.053, provides as follows:

3.2.1 Continued Authorization Request

The QIO shall not deny or reduce the amount, frequency, or duration of a service that is already being provided, unless:

- The reduction is to correct for factual error or omissions in prior certifications.
- There is a documented improvement in the recipient’s medical condition.
- There is a documented change in the recipient’s circumstances.
- The reviewing physician determines the recipient will not gain any additional benefit by continuing services at the current level.

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Page 3 of Authorization Policy.

26. In this case, Respondent denied Petitioner’s BA services. The NOO and NRD explained that Petitioner’s request for services did not meet medical necessity as the assessment and treatment plan was not “[c]onsistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational.” See supra ¶ 4-5.

27. As provided in the BA policy and the EPSDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. A component of medical necessity is that services must be “consistent with generally accepted professional medical standards.” As outlined above, Dr. Conway provided credible and persuasive testimony identifying several instances where the assessment process and Treatment Plan did not follow generally accepted standards of ABA. For example, the documentation provided for review showed significant confusion as to how the assessment took place. Part of the testimony indicates there were [REDACTED] observations over a three (3) hour period. Some of the evidence indicates there were [REDACTED] observations over a twelve (12) hour period. [REDACTED] testified that [REDACTED] conducted [REDACTED] observation periods. Some of the observations and data collection was done by family members. And finally, Dr. Conway testified that six (6) hours had been authorized by Medicaid for assessment observation. See supra ¶ 7, 8, 12, and 13. Thus, Respondent demonstrated that, based on the information in the record, the requested BA services are not “consistent with generally accepted professional medical standards.” Because

the services are not consistent with generally accepted professional medical standards, the critical element of medical necessity is not met. *See supra* ¶ 15.

28. In this case, Petitioner's provider recommended the establishment of BA services. However, 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. *See supra* ¶ 23.

29. Accordingly, Petitioner has failed to establish by a preponderance of the evidence that the requested BA services are medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, the BA services at issue are not necessary to correct or ameliorate a defect or a physical and mental illness or condition.

30. Upon consideration of the testimony provided, Petitioner's Composite Exhibit 1, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, and the applicable law and policies, the undersigned finds that Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of BA services was incorrect.

DECISION

Respondent's denial of Behavior Analysis services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of Behavior Analysis services is **DENIED**.

DONE and **ORDERED** this 10th day of October 2024, in Tallahassee, Leon County, Florida.



Digitally signed by Laura
Gallagher
Reason: for George Winslow
24-FH2108
Date: 2024.10.10 10:17:38
-04'00'

GEORGE WINSLOW, 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:

[REDACTED]
[REDACTED]

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