



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

FILED

Jul 18, 2023, 3:13 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0845

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing in the instant case on May 11, 2023, at 1:00 p.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, Inc.

STATEMENT OF ISSUE

The first issue is whether Respondent proved by a preponderance of the evidence that the reduction of home health services, specifically, personal care services, is correct.

The second issue is whether Respondent proved by a preponderance of the evidence that the reduction of home health services, specifically, private duty nursing services, is correct.

PRELIMINARY STATEMENT

All parties appeared telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s Authorized Representative and [REDACTED], appeared on behalf of Petitioner.

Kimberly Bouchette, Clinical Appeals Coordinator for Sunshine State Health Plan, Inc. (“Sunshine Health”), appeared for the Fair Hearing as a representative for Respondent. The following persons appeared at the Fair Hearing as a witness for Respondent: Dr. Maria Samerson (“Dr. Samerson”), Senior Medical Director for Sunshine Health. The following persons attended the Fair Hearing as observers: Sabrina Ledgister, Senior Manager of the Case Management Department for Sunshine Health; Ally Hightower, a Case Manager for Sunshine Health, Mary Ellen McFann, a Case Management Supervisor for Sunshine Health, Dr. Frances Char, a Medical Director for Sunshine Health.

Suzanne Chillari, a Medical Health Care Analyst and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “ACHA”), appeared as an observer for the Agency.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and thirty-four (234)-page evidence packet that appears in the Office of Fair Hearings’ document management system as file title “MFH packet [Petitioner]-Part 1.pdf” and “MFH packet [Petitioner]-Part 2.pdf.” Absent an objection from the Petitioner, the undersigned admitted the evidence packet as Respondent’s Composite Exhibit 1 (“RCE 1”).

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a one hundred and seventy-six (176)-page evidence packet that appears in the Office of Fair Hearings’ document management system as file title “23-FH0845 Email Evidence (2).pdf” and “Email correspondence -Evidence.pdf.” Absent an objection from the Respondent, the undersigned admitted the evidence packet as Petitioner’s Composite Exhibit 1 (“PCE-1”).

FINDINGS OF FACT

1. As of January 1, 2016, Petitioner is an enrolled member of Sunshine Health’s Medicaid MMA program. See Respondent’s Composite Exhibit 1, page 2. Sunshine Health is a Medicaid Managed Care organization contracted by the Agency to provide services to eligible Medicaid recipients in the State of Florida.

2. As of the date of the Fair Hearing, Petitioner is [REDACTED]. *Id.* at 18. Petitioner has the following diagnoses: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See PCE 1 at page 3.

[REDACTED]. See RCE 1 at page

43. Petitioner’s functional limitations include [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. On April 5, 2023, Petitioner’s provider, [REDACTED], executed a Home Health Certificate and Plan of Care (“POC”), for Petitioner to receive twenty-four (24) hours a day, seven days per week of skilled nursing (“SN”) care; and up to twenty-four (24) hours per day, seven (7) days per week of home health aide (“HHA”) services, as needed (“PRN”), when SN care is unavailable and a family member is present. *Id.* at 27. These home health visits services would be given by a licensed practical nurse (“LPN”), or by a registered nurse (“RN”) or HHA when SN is not available and the parents are available to administer medications and/or complete other SN tasks. These home health care services would be rendered when Petitioner is in [REDACTED], Florida where one parent lives, and in [REDACTED], Florida where the other lives. *Id.* at 28.

4. According to the POC, during the previous certification period, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* at 28.

According to the POC, an RN or HHA will provide personal care services, housekeeping services, and assistance with activities of daily living (ADLs). *Id.* at 27 – 28. Regarding Petitioner’s neurological care, the POC provides that a

[REDACTED]

[REDACTED] *Id.* at 28. Regarding Petitioner’s respiratory care, [REDACTED]

[REDACTED]

[REDACTED] *Id.*

5. On April 10, 2023, Respondent, Sunshine Health, issued a Notice of Adverse Benefit Determination (“NABD”) reducing Petitioner’s services as follows: simultaneous private duty nursing services and home health aide services are reduced from twenty-four (24) hours per day, seven days a week, to twelve (12) hours per day, seven days per week, for private duty nursing services, and twelve (12) hour per day, seven (7) days per week, for home health aide services when unable to staff with private duty nursing services due to [REDACTED] not being at home because [REDACTED] is at work. The NABD provided that both the private duty nursing services and the home health aide services would each continue at twenty-four (24) hours per day, seven days a week, for a two (2) week transition period, from March 30, 2023, to April 13, 2023. Respondent made its decision based on medical necessity, 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 59G-1.010).

___ Must be needed to protect your child's life, prevent significant illness or disability to your child, or to alleviate your child's severe pain.

X Must 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;

___ Must meet accepted medical standards and not be experimental or investigational.

___ Must be able to be 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.

___ Must be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

(The convenience factor is not applied to the determination of the medically necessary level of private duty nursing (PDN) for children under the age of 21.)

....

The facts that we used to make our decision are:

Sunshine Health Policy on Procedure and Review of Personal Care Services Requests, FL.UM.25, Sunshine Health Policy on Review of Private Duty Nursing Requests, FL.UM.26, Sunshine Health Member Handbook, Services covered by Sunshine Health, Florida Medicaid, Private Duty Nursing Services Coverage Policy, and Florida Medicaid Home Health Visits Service Coverage Policy. This decision was made with regards to Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT).

Rationale: Request for continuation of private duty nursing services (special nursing care received in the home) and home health aide services (medical care received in the home) in the home is partially approved. Approval is granted for private duty nursing services and home health aide services for twenty-four hours per day, seven days per week for two weeks. After the two-week approval period, approval is granted for private duty nursing services for twelve hours per day, seven days per week and home health aide services twelve hours per day, seven days per week when unable (not able) to staff with private duty nursing services due to [REDACTED] not being at home because [REDACTED] is at work. The additional twelve hours per day, seven nights per week is denied. Insufficient (not enough) clinical documentation (note) has been submitted to approve this request as submitted. There are no clinical notes available that describe your child's medical condition. There are no clinical notes describing why your child needs the support of a skilled nurse at night. In addition, no plan of care (an action plan of treatment and care to help your child reach [REDACTED] goals) has been submitted, signed by the requesting physician (medical doctor). A physician must direct and monitor the services provided by an independent registered nurse or licensed practical nurse and must be available to consult on your child's medical condition. Florida Medicaid does

not reimburse (give back money) for services rendered (given) prior to the development and approval of the plan of care. Providers are required to maintain written physician's orders and a plan of care developed for your child in [REDACTED] file. There is no documentation (note) to why your child needs both a private duty nurse and a home health aide at the same time. Your child has [REDACTED]

[REDACTED] Your child does not have a breathing or feeding tube (a tube placed into the belly to supply nutrition when a person is not able to eat by mouth). There is no documentation of a breathing or feeding tube. Your child is not technology dependent (use of medical device for the loss of a bodily function). Your child is not on a ventilator (machine to help your child breathe). Your child is not receiving intravenous (into the vein) medicines. There is no documentation as to what level of parental or guardian participation (help) is currently present or should be expected. Babysitting services are specifically noted to not be a covered benefit (not paid for by the insurance plan). Babysitting is defined as custodial care (help with daily activities), daycare, afterschool care, supervision, or similar childcare unrelated to the services that are documented to be medically necessary for your child. This request may be reconsidered (reviewed again) when up to date documentation is received to support additional private duty nursing.

However, we have approved private duty nursing services (billing codes S9123 and S9124) and home health aide services (billing code S9122) for twenty-four hours per day, seven days per week for two weeks, from March 30, 2023 to April 13, 2023, then after the two-week transition period, approval is granted for private duty nursing services (billing codes S9123 and S9124) for twelve hours per day, seven days per week and home health aide services (billing code S9122) for twelve hours per day, seven days per week when unable to staff with private duty nursing services, using OP34 2669214 from April 14, 2023 to May 28, 2023 using NurseCore Management Services.

Pages 5 - 7 of RCE 1.

6. Petitioner appealed the NABD, and on April 12, 2023, Respondent issued a Notice of Plan Appeal Resolution ("NPAR"), upholding the determination to reduce the private duty nursing services and home health aide services at issue. Respondent explained the reduction of services, as follows:

The reason for our decision was the previous decision to partially approve and partially deny private duty nursing and home health aide services is upheld. There are no clinical notes describing why your child needs skilled nursing services overnight. There is no documentation to explain why they need both a private duty nurse and a home health aide at the same time. The clinical information that we received indicate that your child has not had a [REDACTED]. [REDACTED] The clinical information that we received does not indicate that your child needs advanced respiratory support. Your child does not need multiple medications administered in the veins. They do not have a feeding tube. Criteria: FL.UM.25.00 Review for Personal Care Service Requests; 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 EPSDT. This decision was made by a Medical Director who is Board Certified Physician in Pediatrics.

Pages 30 - 31 of RCE 1.

7. On April 13, 2023, [REDACTED] requested a Fair Hearing on behalf of Petitioner due to Respondent's reduction of private duty nursing services and home health aide services. On April 21, 2023, the undersigned scheduled the hearing for May 5, 2023, at 9:00 a.m., which hearing was continued, and on May 8, 2023, the undersigned rescheduled the hearing for May 11, 2023, at 1:00 pm, EST, and all parties were duly notified.

8. During the Fair Hearing, Dr. Samerson's testimony established that Petitioner is a medically complex member, including that [REDACTED] is diagnosed with having [REDACTED]. Dr. Samerson testified that Petitioner's current Plan of Care for twenty-four (24) hours of skilled nursing care and twenty-four (24) hours of home health aide services, seven (7) days per week, is excessive. Dr. Samerson explained that all records of Petitioner were reviewed by a medical director, then re-reviewed on appeal by another medical director. After reviewing the records, Dr. Samerson upholds the determination to reduce the services to twelve (12) hours of skilled nursing care per day and twelve (12) hours of home health aide services per day, seven (7) days

per week. Dr. Samerson bases her determination on Petitioner's records that show a history of [REDACTED], but that there has been [REDACTED]. Dr. Samerson acknowledged that while there are many recorded notes of Petitioner's [REDACTED] [REDACTED]. Dr. Samerson noted that Petitioner is not on continuous respiratory support, [REDACTED] [REDACTED]. There is no documentation for necessary invasive or noninvasive ventilation. Dr. Samerson further noted that there are no clinical notes that patient needs to receive medication through an IV or intravenously; nor are there clinical notes that patient needs to be fed through feeding tube or needs intermittent or continuous feedings. Dr. Samerson testified that, in general, private duty nursing is required for the conditions listed above, and that nurses are also helpful to administer medications (even if oral) if a parent or guardian is not available. Dr. Samerson further testified that home health aides generally provide personal care services for a patient's ADLs when [REDACTED] is unable to perform those activities, and when a parent or guardian is not available. Dr. Samerson clarified that home health aides are not intended to be there when a parent or guardian is also present, or when a private duty nurse is also present. Dr. Samerson explained that exceptions to the general rule will be if a member were intubated on a vent or on a feeding tube, or if a nurse needs assistance with personal care services for a patient's ADLs. [REDACTED]

[REDACTED] Dr. Samerson testified that upon review of Petitioner's records, [REDACTED] Dr. Samerson testified that

Petitioner's records show that [REDACTED]. Dr. Samerson concluded that, based on the information and conditions provided in the records, twelve (12) hours of private duty nursing and twelve (12) hours of home health aide services, seven (7) days a week, is adequate for Petitioner. Dr. Samerson explained that the approved service hours may be in shifts to meet the needs of the family, whether they use them during the day or during the night.

9. [REDACTED] testified that [REDACTED] is one of the conditions in the Plan of Care, and that Petitioner has had [REDACTED] testified that Petitioner had [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. [REDACTED] further testified

to the following:

[Petitioner] requires [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted text block]

Petitioner’s Composite Exhibit 1 at page 7.

- 10. [Redacted] testified that [Redacted]
- [Redacted text block]

home health aide without a skilled nurse especially at night or when [REDACTED] are at work; therefore, twenty-four hours of both private duty nursing and home health aide services for seven days a week are medically necessary for Petitioner.

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, which states in pertinent part, as follows:

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 must have one of the functional impairments noted in the "Level of Functional Impairment" section below.
- 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

Respondent Composite Exhibit 1 at pages 96 - 97.

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, 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.
- . . .

Respondent Composite Exhibit 1 at page 108.

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). 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), which states "[e]ach fair hearing shall be a *de novo*, evidentiary proceeding, and shall be conducted in a manner that meets the requirements of this rule."

15. The burden of proof in this proceeding is governed by Fla. Admin. Code R. 59G-1.100(17)(g), which provides as follows:

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

16. Respondent is reducing existing services provided to Petitioner. As such, 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.).

17. The Florida Medicaid Home Health Visits Services Coverage Policy (November 2016) ("Home Health Policy"), which is incorporated by reference in Fla. Admin. Code R. 59G-4.130, establishes the coverage provision for home health visits services available under the Florida Medicaid program. The Home Health Policy states, in pertinent part, as follows:

4.2 Specific Criteria

....

Recipients who meet the following criteria may receive any combination of skilled nursing or home health aide visit services up to the coverage limits specified in this policy.

....

See the Florida Medicaid personal care and private duty nursing services coverage policies if the recipient is under the age of 21 years and requires more care than can be furnished through a home health visit.

....

Respondent Composite Exhibit 1 at page 223.

18. 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 at pages 1 – 4.

19. 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. 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.

4.2.1 Private Duty Nursing Provided by Parent or Legal Guardian

Florida Medicaid may reimburse an enrolled home health agency provider for up to 40 hours per week, per recipient, for PDN services rendered by a parent or legal guardian who has a valid RN or LPN license in the state of Florida, and who is employed by the home health agency.

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.

Private Duty Nursing Services Coverage Policy at pages 1 – 4.

20. 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.

21. 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.

22. 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 provider¹

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.

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

2.2 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.

¹ Subparagraph (a)(5) of the medical necessity definition, that services provided must “be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider” shall not be applied when determining the medical necessity of private duty nursing services. See supra ¶ 19.

24. In the instant case, Petitioner is under the age of 21, and therefore, EPSDT applies to [REDACTED] request for continuation of home health services, in particular, twenty-four (24) hours of personal care services and twenty-four (24) hours of private duty nursing services, seven days per week. As established on the record by the evidence and testimony, Respondent denied Petitioner's request, and reduced the amount of services to be provided because the documentation in support of Petitioner's request failed to establish that the requested home health services are medically necessary. *See supra* ¶ 5, 6.

25. 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.

See supra ¶ 18.

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.

See supra ¶ 19.

26. The Florida Medicaid program provides coverage to its recipients for home health services, including personal care services and private duty nursing services. *See supra* ¶ 18, 19. 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 supra* ¶ 18, 19. Parents and legal guardians of Medicaid recipients are mandated to participate in providing care to the fullest extent possible. *See supra* ¶ 18. These services cannot be authorized for babysitting, companion sitting or leisure activities, escort services, housekeeping, and respite care. *See supra* ¶ 18, 19. Personal care services and private duty nursing services, such as the home health services at issue, must meet the medical necessity criteria defined in Fla. Admin. Code R. 59G-1.010. *See supra* ¶ 18, 19. To be medically necessary, the services requested must meet the five criteria set forth in section 2.83 of the Definitions Policy.² *See supra* ¶ 22. Specifically, the type of service requested, and the quantity of service requested must not be in excess of the recipient’s needs. *See supra* ¶ 22.

27. The evidence presented in this case does not reflect that the reduced services are medically necessary. Here, Respondent determined that home health services, including twenty-four (24) hours of personal care services by a home health aide and twenty-four (24) hours of private nursing duty services, seven days a week, were not medically necessary because the services were duplicative in kind. Private duty nursing is furnished for the purposes of performing skilled interventions or monitoring the effects of prescribed treatment. *See supra* ¶ 12. The facts of this case support the need for a private duty nurse particularly during the night to monitor

² Subparagraph (a)(5) of the medical necessity definition, that services provided must “be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider” shall not be applied when determining the medical necessity of private duty nursing services. *See supra* ¶ 19.

Petitioner's fragile state and to administer medications as prescribed. However, a home health aide, including with the parent when they are home, should sufficiently monitor the Petitioner and provide assistance with [REDACTED] ADLs and IADLs for twelve (12) hours per day, without a skilled private duty nurse present. Pursuant to Florida Administrative Code 59A-18.0081, a home health aide shall, among other duties, document services provided to the patient file said documentation with the nurse registry on a regular basis; observe appearance and gross behavioral changes in the patient and report these changes to the patient's health care surrogate and the nurse registry; maintain a clean, safe and healthy environment, which may include light cleaning and straightening of the bathroom, straightening the sleeping and living areas, washing the patient's dishes or laundry, and such tasks to maintain cleanliness and safety for the patient; perform other activities as taught and documented by a registered nurse, concerning activities for a specific patient including assisting with the change of a colostomy bag, reinforcement of dressing, assisting with the use of devices for aid to daily living such as a wheelchair or walker, assisting with prescribed range of motion exercises, assisting with prescribed ice cap or collar, doing simple urine tests for sugar, acetone or albumin, measuring and preparing special diets, measuring intake and output of fluids, and, measuring temperature, pulse, respiration or blood pressure. Fla. Admin. Code R. 59A-18.0081 (2016).

28. Here, according to the Plan of Care, Petitioner's needs should be adequately met by twenty-four (24) hour care, seven days a week, by a home health aide during twelve (12) hours of the day, and by a private duty/skilled nurse during the other twelve (12) hours of the day. For instance, each caregiver would be able to keep Petitioner in sight at all times to prevent [REDACTED], and to keep safety measures in place. Petitioner's skilled nurse or home

health aide may provide [REDACTED]

[REDACTED] The skilled nurse or home health aide may monitor neurological/mental status, vital signs to include temperature, pulse, respiratory rate, BP (optional) and pain, and to notify a medical doctor if patient's temperature, pulse, respiratory rate, and blood pressure statistics reach a certain point. The skilled nurse or home health aide may assess patient for pulse/cardio/pulmonary status, GU/GI status, nutrition/hydration status, skin integrity, medication and diet compliance, activities of daily living (ADL) status, safety measures, compliance with treatment protocol, and psychosocial status. The skilled nurse would administer medications per doctor's orders when the parent is not present, and she or he may assist with some of Petitioner's personal care needs. See supra ¶ 4. The home health aide may provide personal care, housekeeping services, assistance with ADLs, and assist with housekeeping services. *Id.* Petitioner's parents would be able to provide these services in addition to the skilled nurse and home health aide, with time limitations noted for work outside the home. Pursuant to the PC Policy, "Parents and legal guardians must participate in providing care to the fullest extent possible." See supra ¶ 18.

29. Based on the foregoing, the record shows that twenty-four (24) hours of personal care services and twenty-four (24) hours of private duty nursing services, seven days per week, provided by a home health aide, when the parent is not present, and a skilled nurse, are "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 supra ¶ 5. Accordingly, the record does not show that the previously authorized home health services at issue, including personal care services and private duty nursing services, are medically necessary.

30. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent has proven by a preponderance of the evidence that the personal care services being provided by a home health aide twenty-four (24) hours per day, for seven days a week, and the private duty nursing services being provided by a skilled nurse twenty-four (24) hours per day, seven days per week, are excessive, and not medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Respondent has proven that the services at issue are not necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Respondent proved by a preponderance of the evidence that the reduction in services was correct.

Based on the foregoing,

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's reduction of home health services, specifically, personal care services, is **AFFIRMED**. Petitioner's appeal based on Respondent's reduction of home health services, specifically, personal care services, is **DENIED**.

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

DONE AND ORDERED this 18th day of July, 2023 in Tallahassee, Leon County, Florida.



Debbie K. Winicki
23-FH0845
2023.07.18 09:20:22
-04'00'

DEBBIE WINICKI, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11

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]

Sunshine State Health Plan, Inc.
SunshineHealth_MFH@centene.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com