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STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

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DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-2518

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION

CIRCUIT: 11 Dade

UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned-hearing officer on May 12, 2009, at 9:49 a.m., in Miami, Florida. The petitioner was represented by her parents, Present, on behalf of the respondent was Sandy Moss, program specialist with the Agency for Health Care Administration (AHCA). Appearing telephonically as witnesses for the agency was Dr. Rakth Mittal, physician reviewer and Melanie Clyatt, registered nurse reviewer supervisor with Keystone Peer Review Organization (KēPRO) South.

ISSUE

At issue is the agency's action of March 30, 2009 and April 10, 2009, denying 360 hours of private duty nursing (PDN) and approving 3,444 hours from the requested 3,804 hours. The certification period is for March 21, 2009 through September 16, 2009. The agency has the burden of proof.

FINDINGS OF FACT

1. The petitioner is seven years old (at time of review) and a Medicaid beneficiary in the state of Florida. The petitioner's diagnosis as reported to the agency, "Anomal skull/face bones, lack of coordination, trach, gastrostomy, hirsutism."
2. The petitioner has been receiving PDN services at its prior level throughout the hearing process.
3. On March 25, 2009, the provider (Nationwide Health Care Services) requested 3,808 hours (22 hours [9am-7pm, 7pm-7am] a day on weekdays, and 19 hours [12pm-7pm, 7pm-7am] on Saturdays and Sundays) of skilled nursing for the petitioner for the certification period of March 21, 2009 through September 16, 2009.
4. The agency has contracted Keystone Peer Review Organization (KēPRO South) to perform medical reviews for Private Duty Nursing and the Personal Care Prior Authorization Program for Medicaid beneficiaries. This prior authorization review determines medical necessity of the hours requested, under the terms of the Florida Medicaid Program. The request for service is submitted by the provider, along with all information/documentation required in order for KēPRO to make a determination on medical necessity for the level of service being requested. This service is reviewed every 180 days (6 months) and a request for modification can be requested by the petitioner.
5. An initial screening of the request was completed by a registered nurse reviewer. At this level of review, the amount of hours being requested was not

approved by the nurse reviewer. The request was referred to a board certified pediatric specialty physician consultant, for review of the level of care (hours) being requested.

6. On March 27, 2009, the physician consultant reviewed the information submitted and denied 360 hours (2 hours daily from 7pm to 9pm) and approved 3,444 hours of the request for PDN services documenting, "...7YO with trach, PICC line for antibiotics, Gtube, dev delay. Mom works 9A-5P M-F. Would approve SN, but would reduce coverage to 9A-7P, 9P-7A M-F and 12P-7P, 9P-7A S/S."
7. On March 30, 2009, a PDN/PC Recipient Denial Letter was issued to the petitioner denying 360 hours and approving 3,444 PDN hours for the certification period of March 21st through September 16th.
8. On April 1, 2009, the provider then submitted a reconsideration request reiterating information initially provided. A different board certified physician consultant reviewed the entire case, including length of coverage over time and determined that the parents could participate in the care of the petitioner when they were available and not at work. The reviewing physician documents, "PCG has demonstrated the ability to care for recipient. Hours suggested by first physician reviewer is reasonable and supports skilled services as stated in the Home Health Services Coverage and Limitations Handbook. Suggest to uphold the denial."

9. The physician reviewers considered all social and medical information of the petitioner and the household members, including work schedule (9am to 5 pm) for the mother and the father's work schedule was not considered as it was not provided.
10. On April 10, 2009, a PDN/PC Recipient Reconsideration-Denial Upheld notice was issued to the petitioner and provider informing them of the approval and denial of hours. The petitioner appealed the decision on April 14, 2009.

CONCLUSIONS OF LAW

By agreement between the Agency for Health Care Administration and the Department of Families and Children, the Agency for Health Care Administration has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to Florida Statute, Chapter 120.80.

Florida Statute 409.905 addresses Mandatory Medicaid services and states as follows:

The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law. Mandatory services rendered by providers in mobile units to Medicaid recipients may be restricted by the agency. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, number of services, or any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216.

(4)(b) The agency shall implement a comprehensive utilization management program that requires prior authorization of all private duty

nursing services...The utilization management program shall also include a process for periodically reviewing the ongoing use of private duty nursing services. The assessment of need shall be based on a child's condition, family support and care supplements, a family's ability to provide care, and a family's and child's schedule regarding work, school, sleep, and care for other family dependents...

Fla. Admin. Code 59G-1.010 definitions states in part:

(166) "Medically necessary" or "medical necessity" means that the medical or allied care, goods, or services furnished or ordered must:

(a) Meet the following conditions:

1. Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain;
2. 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;
3. Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational;
4. 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;
5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

(c) 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.

Fla. Admin. Code 59G-4.130 Home Health Services states in part:

(1) This rule applies to all home health agencies licensed under Chapter 400, Part III, F.S., and certified by the Agency for Health Care Administration for participation in the Medicaid program for home health care.

(2) All home health agency providers enrolled in the Medicaid program must be in compliance with the Florida Medicaid Home Health Services Coverage and Limitations Handbook, July 2008, incorporated by

reference, and the Florida Medicaid Provider Reimbursement Handbook, CMS-1500, which is incorporated in Rule 59G-4.001, F.A.C. ...

The Home Health Services Coverage and Limitations Handbook (July 2008), pages 2-17 and 2-19 states in part:

Private Duty Nursing Definition

Private duty nursing services are medically-necessary skilled nursing services that may be provided in a child's home or other authorized settings to support the care required by the child's complex medical condition.

Parental Responsibility

Private duty nursing services are authorized to supplement care provided by parents and caregivers. Parents and caregivers must participate in providing care to the fullest extent possible. Training can be offered to parents and caregivers to enable them to provide care they can safely render. Medicaid does not reimburse private duty nursing services provided solely for the convenience of the child, the parents or the caregiver.

Flex Hours or Banking of Hours

Medicaid does not allow "banking of hours" or "flex hours". Only the number of hours that are medically necessary may be approved. Home health service providers must request only the number hours that are expected to be used and must indicate the times of day and days per week that the hours are needed. If a recipient requires additional hours due to unforeseen circumstances or change in medical or social circumstances, the home health service providers should submit a modification request to the PRO for the additional hours needed.

Authorization Process

Private duty nursing services are authorized by the Medicaid peer review organization if the services are determined to be medically necessary. Private duty nursing services will be decreased over time as parents and caregivers are taught skills to care for their child and are capable of safely providing that care or as the child's condition improves.

Prior Authorization

All private duty nursing services must be prior authorized by the Medicaid peer review organization prior to the delivery of services.

The petitioner's mother states that the situation at home is "smooth and easy" only because of the experience and help of the nurses. She states she fully knows how to take care of her daughter, even though the emergency has been called on some occasions and that she also needs time to care for herself and the home.

The petitioner's father states that he works full time as a sound engineer from 9am to 6 pm or 7 pm and some weekends from 11pm to 4 am. He states that he does not feel fully capable of caring for his daughter as he "freaks out."

The hearing officer finds that according to the information provided to the respondent, the denial of two hours daily in the evening for the certification period was appropriate. Both parents are at home and the mother is able to care for their daughter, with the assistance of the petitioner's father from 7pm to 9pm. The language contained in the Handbook explains that parents must participate in the care of the child to the fullest extent possible.

Based on the above-cited authorities, the respondent's action to approve 3,444 PDN hours and deny 360 PDN hours from the total 3,804 hours requested is within the rules of the Program.

DECISION

The appeal is denied as stated in the Conclusions of Law.

NOTICE OF RIGHT TO APPEAL

This decision is final and binding on the part of the agency. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, FL 32308-5403. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date

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stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The agency has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 8th day of July, 2009,

in Tallahassee, Florida.

A. G. Littman 

A. G. Littman
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