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State of New Jersey
DEPARTMENT OF HUMAN SERVICES
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STEPHEN CHA, MD, MHSR
Commissioner

GREGORY WOODS
Assistant Commissioner

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

C.W.,	:	
PETITIONER,	:	**ADMINISTRATIVE ACTION**
v.	:	**ORDER OF REMAND**
FIDELIS CARE,	:	**OAL DKT. NO. HMA 07944-26**
RESPONDENT.	:	

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the contents of the Office of Administrative Law (OAL) case file. Neither party filed exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is July 27, 2026, in accordance with N.J.S.A. 52:14B-10 which requires an Agency Head to adopt, reject, or modify the Initial Decision within 45 days of the agency's receipt.

This matter arises from Fidelis Care's April 1, 2026, assessment, which resulted in a decision to reduce Petitioner's Private Duty Nursing (PDN) Services, from 24 hours per day, seven days a week down to 16 hours per day, seven days a week.[1]

[1] Page 1 of the Initial Decision states that Petitioner's PDN hours are being reduced from 24 hours per day, seven days per week to 16 hours per day, seven days per week for two weeks, then to 8 hours per day, seven days per

Petitioner is a 4-year-old child who has been diagnosed with congenital diaphragmatic hernia, pulmonary hypertension, respiratory failure, and is dependent on a respirator, tracheostomy and a feeding tube for feeding and medications. ID at 2. Under the program, children under the age of 21 years old are eligible to receive any medically necessary service, including PDN services. Licensed nurses, employed by a licensed agency or healthcare services firm approved by Division of Medical Assistance and Health Services, may provide PDN services in the home to beneficiaries receiving managed long-term support services (MLTSS) and Early and Periodic Screening, Diagnostic, and Treatment services (EPSDT) beneficiaries. N.J.A.C. 10:60-1.2, N.J.A.C. 10:60-5.1(a),(b).

Private duty nursing services are defined as "individual and continuous nursing care, as different from part time or intermittent care, provided by licensed nurses in the home. . ." N.J.A.C. 10:60-1.2. To be considered in need of EPSDT/PDN services, "an individual must exhibit a severity of illness that requires complex intervention by licensed nursing personnel." N.J.A.C. 10:60-5.3(b). "Complex" means the degree of difficulty and/or intensity of treatment/procedures." N.J.A.C. 10:60-5.3(b)(2). "Ongoing" is defined as "the beneficiary needs skilled nursing intervention 24 hours per day/seven days per week." N.J.A.C. 10:60-5.3(b)(1). The regulations define "skilled nursing interventions" as "procedures that require the knowledge and experience of licensed nursing personnel, or a trained primary caregiver." N.J.A.C. 10:60-5.3(b)(3).

Patient observation and monitoring alone do not qualify for this type of care. N.J.A.C. 10:60-5.4(d). However, the regulations addressing the medical necessity for private duty nursing services state that patient observation, monitoring, recording and assessment may constitute a need for private duty nursing services provided that the

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week. Based on Page 2 of the Initial Decision and Exhibit R-1, this appears to be a mistake.

beneficiary is ventilator dependent, has an active tracheostomy and needs deep suctioning. N.J.A.C. 10:60-5.4(b)(1). Medical necessity may also be established if the individual needs around-the-clock nebulizer treatments, with chest physiotherapy; gastrostomy feeding when complicated by frequent regurgitation and/or aspiration; or a seizure disorder manifested by frequent prolonged seizures, requiring emergency administration of anti-convulsants. N.J.A.C. 10:60-5.4(b)(2). However, private duty nursing cannot be used purely for monitoring in the absence of a qualifying medical need.

In the Initial Decision, the Administrative Law Judge (ALJ) found that Petitioner's previous PDN assessment, dated December 15, 2025, resulted in a score of 67 which equates to PDN services of 24 hours per day, 7 days per week, and that the current assessment dated April 1, 2026, resulted in a score of 54.4 points, which equates to PDN services of 16 hours per day, 7 days per week. ID at 2. The ALJ specified that the reduction in points from the December 2025 assessment to the April 2026 assessment are as follows:

a. Nursing Needs – December 2025 assessment provided 9 points for continued assessment while the April 2026 assessment provided 6 points for frequent visual monitoring.
b. Respiratory Assistance – December 2025 assessment provided 2 points for oxygen via nasal canula, 1.5 points for humidification and 2 points for no respiratory effort while the April 2026 assessment removed all points in this category as they were not reflective of Petitioner's needs.
c. Sleep Monitoring – December 2025 assessment provided 2 points for being awake no more than 3 hours per night while the April 2026 assessment removed these points due to improved sleep pattern.
d. Communication / Behavior – December 2025 assessment provided points for communication deficits while the April 2026 assessment removed these points as they were inappropriately awarded.

ID at 2-3. The ALJ summarized that the point reductions are either related to improved clinical condition or being inappropriately awarded. ID at 3. The ALJ clarified that Petitioner attends a private school 5 days per week for 8 hours per day, but the school does not pay for or provide PDN services. Ibid. The school requires Petitioner to have

PDN services paid for by Fidelis Care to attend school. Ibid. In conclusion, the ALJ held that since there is no evidence presented to conclude that the PDN assessment was performed improperly or that the conclusions reached therein were medically inappropriate, the reduction in PDN hours by Fidelis Care is correct. ID at 5.

It is clear that the Initial Decision primarily focuses on how points were assigned during the assessment, rather than the underlying question of medical necessity. It can often be informative to review the Notice of Action letter the Managed Care Organization (MCO) sends to a Petitioner, to determine whether the letter merely references the assessment or if the changes in the member's medical condition are fully described, as is required. NOA letters issued when an ongoing service is reduced must include a full, detailed explanation of the reason for the decision, and that explanation must be provided in the plainest language possible. When the adverse action is the result of a reassessment, solely referencing the assessment is not adequate. Rather, the changes in the member's condition identified in the reassessment must be fully described, using plain language, in the NOA letter itself. Any determination that reduces an ongoing service must clearly describe the changes from the member's condition in a prior approval of the service to their current condition, and detail how their improvement has caused them to no longer meet the clinical criteria for approval of the service, or for the amount of hours/units previously approved. Any NOA letter that does not clearly describe the change in a member's condition and/or care needs to justify a reduction of authorized hours/units will be considered incomplete and non-compliant. In the rare case where MCO staff have determined that the initial approval was not appropriate, and therefore there should be a change in service level, even without a change in clinical need, this should be explicitly stated in the NOA. These requirements are outlined in the contract between DMAHS and all MCOs, including Fidelis Care.

Unfortunately, the NOA letter is not listed as an exhibit and therefore is not part of the record in this matter and the Finding of Fact section of the Initial Decision does not contain enough information to determine whether Fidelis Care appropriately assessed Petitioner's clinical condition, or simply just relied on the assessment score. Additionally, the one sentence in the Initial Decision applying the facts of this matter to the law, that sentence being "...there is no evidence presented to conclude that the PDN assessment was performed improperly or that the conclusions reached therein were medically inappropriate," is not sufficient. A more robust application of the facts to the law would allow DMAHS to more thoroughly review the Initial Decision to determine whether to adopt, modify, or reject the decision.

Thus, based on the record before me and for the reasons enumerated above, I hereby REVERSE the Initial Decision and REMAND the matter to OAL to clarify the above-mentioned issues.

THEREFORE, it is on this 21st day of JULY 2026,

ORDERED:

That the Initial Decision is hereby REVERSED; and

That the matter is REMANDED to OAL for further testimony and findings as set forth above.

Gregory Woods

Gregory Woods, Assistant Commissioner
Division of Medical Assistance and Health Services