



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Assistant Commissioner

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

E.S.,

PETITIONER,

v.

UNITED HEALTHCARE,

RESPONDENT.

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ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. No. HMA 2126-2021

As Assistant Commissioner of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, Office of Administrative Law (OAL) case file and the documents filed below. Respondent filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is December 30, 2021 in accordance with an Order of Extension.

This matter concerns the reduction of Petitioner's private duty nursing (PDN) hours by United HealthCare (United). Petitioner had been receiving PDN services for eight hours a day, seven days a week. In the course of a reassessment those hours were found not to be medically necessary and terminated effective January 2021. In the course of the appeal,

United's Medical Director consulted with Petitioner's physician and PDN hours were set at four hours, seven days a week to assist with bowel irrigation. R-4. Petitioner appealed this reduction of PDN hours through both the independent utilization review organization (IURO) and Medicaid. The IURO upheld the reduction to four hours. R-5. This appeal followed.

At the outset, the Initial Decision sua sponte reversed the reduction in hours by finding that DMAHS guidance entitled "COVID-19 Prior Authorization Requirements" issued on March 30, 2020 and updated on May 16 and October 15, 2020 precluded the reduction of PDN hours. That guidance to Managed Care Organizations (MCOs) required that outpatient services which require face-to-face assessments "be extended with no reductions in services until the end of the Public Health Emergency." For the reasons that follow, I FIND that the guidance does not prohibit the reassessment of Petitioner's authorization for PDN hours.

The October 15, 2020 guidance did not suspend the regulatory requirement that the nursing agency maintain clinical records including the "documentation of all care rendered" and reassessments of the beneficiary. N.J.A.C. 10:60-5.6. Those rules to reauthorize PDN services do not require the MCO to send an outsider into the home but rather uses the clinical records and assessments that are being done by the nursing staff performing the service. The face-to-face assessment for PDN services is performed by nurses who are in the home providing the skilled nursing services. Those required assessments and clinical notes form the basis for the prior authorization of services. N.J.A.C. 10:60-5.5 Thus, I FIND that United Healthcare was permitted to take action on Petitioner's PDN hours based on clinical records required to be maintained by the PDN agency.

Nor does C.S. vs. Horizon, Dkt. No. HMA 1517-2020 which concerns the reduction in Personal Care Assistance (PCA) hours support the Initial Decision's analysis. That matter concerned PCA not PDN hours. The assessment and reauthorization for PCA services is done by a nurse from the MCO and places another individual in the home to make that

assessment. N.J.A.C. 10:60-3.5(a)3. That decision explained that the PCA re-authorization process was impacted by the October 15, 2020 guidance. Thus I FIND that Petitioner's PDN hours were properly reassessed and the proposed reduction is permissible under the agency guidance.

The Initial Decision then held PDN hours must be approved since the January 8, 2021 appeal outcome letter stated that:

"Private Duty nursing is approved if:

- Your child has seen the doctor and the doctor asked for this service . . ."

Despite the use of ellipses indicating that additional text was omitted, the Initial Decision ends its analysis with that bullet point and found that the request for PDN from Petitioner's doctor mandates that the hours be approved. ID at 12- 13. Prior authorization requirements exist for services to allow review for criteria such as medical necessity, service limitations and peer-to-peer discussions. See N.J.A.C. 10:60-5.1 et seq. regarding prior authorization for PDN services. Significantly, the language in United's outcome letter includes two more bullet points that were omitted from the Initial Decision and used by United to authorize the four hours of PDN service. Those additional bullet points are essential to clinical review of medical necessity and include:

- The doctors' notes and nurses notes show that your child needs skilled nursing care [sic]
- The number of hours of private duty nursing must match the amount of skilled nursing care tasks your child needs performed by the nurse.

R-1.

To that end, United reviewed the records of the nursing tasks being performed including engaging in a peer-to-peer consultation with Petitioner's doctor and concluded

Petitioner's needs could be satisfied through the provision of four hours of PDN services a day. Based on my review of the record, I concur.

The purpose of private duty nursing services is to provide "individual and continuous nursing care", as opposed to "part-time intermittent care". N.J.A.C. 10:60-5.1(b). In order to be considered for private duty nursing services an individual must "exhibit a severity of illness that requires complex skilled nursing interventions on an ongoing basis". 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).

Additionally, the regulations addressing the medical necessity for private duty nursing services state that criteria includes a beneficiary who 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). Additionally the rules define services that do not by themselves constitute a need for PDN services as when there is no intervention as set forth in N.J.A.C. 10:60-5.4(b). Those services include "[p]atient observation, monitoring, recording or assessment; . . . [o]ccasional suctioning; . . . [g]astrostomy feedings, . . . and [s]eizure disorders controlled with medication and/or seizure disorders manifested by frequent minor seizures not occurring in clusters or associated with status epilepticus." N.J.A.C. 10:60-5.4(d).

Petitioner's medical records do not demonstrate that he meets the level of care to support eight hours of skilled nursing care. While United determined that skilled hours were required for bowel irrigation, nothing in the record supports skilled hours beyond that need.

He is not on a ventilator nor does he have an active tracheostomy. While Petitioner did receive oxygen at some point, any assistance with breathing is done as needed. See R-1, R-3 and R-5. The nursing records show that there has been no intervention. R-3. Petitioner is fed through a gastrostomy tube or G-tube but the nursing notes state that the feedings are not complicated nor is there reporting that Petitioner is prone to frequent regurgitation or aspiration. Repositioning of the G-Tube line is not a skilled nursing task. Thus, I hereby REVERSE the Initial Decision and reinstate Respondent's determination that Petitioner was properly assessed for four hours of PDN, seven days a week.

THEREFORE, it is on this 22nd day of DECEMBER 2021,

ORDERED:

That the Initial Decision is hereby REVERSED as set forth above.



Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance and Health Services