



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph. D.
Cabinet Secretary

November 22, 2011

----- and -----for

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 15, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to deny Medicaid payment (medical necessity) for Private Duty Nursing services.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Medicaid regulations provide that all Private Duty Nursing services offered to eligible Medicaid recipients must be reviewed and authorized by WVMI before reimbursement for services will be considered. Private Duty Nursing is considered supportive to the care provided to an individual by the individual's family, foster parents, and/or delegated caregivers, as applicable. Nursing services shall be based on medical necessity.

Evidence presented at the hearing fails to demonstrate medical necessity.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny your request for Medicaid payment of Private Duty Nursing services.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Amy Workman, BMS

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

-----,

Claimant,

v.

Action Number: 11-BOR-1985

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded for -----.
This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on November 15, 2011 on a timely appeal filed August 31, 2011.

II. PROGRAM PURPOSE:

The 1965 Amendments to the Social Security Act established, under Title XIX, a Federal-State medical assistance program commonly known as Medicaid. The Department of Health and Human Resources administers the Medicaid Program in West Virginia in accordance with Federal Regulations. The Bureau for Medical Services is responsible for the development of regulations to implement Federal and State requirements for the program. The Department of Health and Human Resources processes claims for reimbursements to providers participating in the program.

III. PARTICIPANTS:

-----, Claimant's father/representative

-----, Claimant's mother/representative

Joann Ranson, RN, Bureau for Medical Services (BMS), Department's representative

Jenny Craft, RN, West Virginia Medical Institute (WVMI), Department's witness

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its decision to deny Medicaid payment (medical necessity) for Private Duty Nursing services.

V. APPLICABLE POLICY:

Medicaid Program Instruction, MA-01-21, April 11, 2001 – (Revised) Medical Necessity Review and Payment Authorization for Private Duty Nursing (W1990)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Medicaid Program Instruction, MA-01-21, April 11, 2001 – (Revised) Medical Necessity Review and Payment Authorization for Private Duty Nursing (W1990) – Pages 1-11
- D-2 Information received from [REDACTED] M.D., and [REDACTED] Healthcare Services, Pages 12-93
- D-3 Notice of Denial Determination from WVMI, Pages 94-96

VII. FINDINGS OF FACT:

- 1) On or about August 12, 2011, the Claimant, the Claimant's physician [REDACTED] M.D.) and the Claimant's service provider [REDACTED] Healthcare Services) were notified via a Notice of Denial for Private Duty Nursing (Exhibit D-3) that the Claimant's request for Medicaid payment of Private Duty Nursing services was denied. The reason for denial is as follows:

The request for Private Duty Nursing for 84 hours per day [sic] was denied due to not meeting WV Medicaid criteria. The documentation provided did not support that the patient required labor intensive, hourly nursing to meet their needs. Based on the documentation submitted, the mother has been taught and has demonstrated the skills and abilities to carry out the plan of care. Care that is to allow respite for the caregiver, or to allow the caregiver to go to work or care that is at a maintenance level are program exclusions under WV Medicaid.

The physician/provider notices (D-3, bottom of Pages 95 and 96) go on to state -

“Reconsideration: If you do not agree with this decision, you may request a reconsideration of this determination. To exercise this right, a written request and supporting documentation must be submitted to WVMI within 60 days of receipt of this notice. WVMI will complete the reconsideration within 30 working days of the request.”

- 2) The Department's representative, Joann Ranson, RN, Bureau for Medical Services (BMS), introduced the Department's exhibits and reviewed the medical necessity policy (D-1) for Private Duty Nursing (PDN) applied in the Claimant's case. The Department called Jenny Craft, RN, West Virginia Medical Institute (WVMI), as its witness to provide testimony specific to the unfavorable medical necessity review.
- 3) Jenny Craft, RN, WVMI, purported that medical necessity could not be established because the documentation reviewed indicates the Claimant's care is at a maintenance level and does not require the skills of a licensed nurse. RN Craft further testified that the Claimant's caregivers have been taught and demonstrated the skills to care for the Claimant. The most recent 60-day period for which the Claimant was approved for Private Duty Nursing was June 30, 2011 through August 28, 2011. RN Craft cited Exhibit D-2, Page 19, wherein it is documented that [REDACTED] [Healthcare Service] has provided private duty nursing for 2 shifts since July 8. Documentation further indicates that the Claimant continues to show improvement in his developmental skills and notes that he has head control - no longer requiring cueing to maintain his head in the neutral position - and once placed in the standing position, he can slowly and with much cueing move to left and right around furniture. It was noted that the Claimant's family has refused PDN services and elected to provide the Claimant's care for several shifts as demonstrated in Exhibit D-2, Pages 42 through 45 and 47. Additional evidence demonstrating that the Claimant has improved can be found in Exhibit D-2, Page 41, wherein it is documented that the Claimant is feeding himself. RN Craft acknowledged that providing care for the Claimant is taxing on his mother, but maintenance care, respite care or care provided solely to allow the individual's family to go to work are excluded.
- 4) The Claimant's parents/representatives assert that their son continues to need PDN services and that the documentation does not accurately reflect his condition. They reported that they have been forced to provide care, or pay out of pocket for services to a private individual, due to home health nurse staffing shortages. ----- testified that the family has only refused PDN services from [REDACTED] when they went out of town or the nurse assigned to provide care for their son was a smoker. ----- questioned whether the Claimant's physician was provided notice of the 60 additional days to request reconsideration of the denial, as she would typically submit necessary documentation. It was noted that the Claimant's physician has moved to a new location and she was off on maternity leave around this time. As a matter of record, ----- acknowledged that the documentation reviewed for medical necessity portrays his son in a positive light, but the nurse whose documentation was relied upon has a tendency to exaggerate because she wants the Claimant to succeed. ----- contends that his son is not able to feed himself as indicated in the documentation and that he continues to get his medication through a G-Tube. In addition, ----- purported that she is unable to provide continuous care for her son for extended periods due to her medical condition. ----- purported that if this documentation was accurate, he would not be requesting assistance. ----- noted that his son recently underwent a psychological evaluation and he believes this information will be beneficial for demonstrating medical necessity.

- 5) Medicaid Program Instruction MA-01-21, April 11, 2001 – Medical Necessity Review and Payment Authorization for Private Duty Nursing (W1990) states:

PURPOSE:

This program instruction is a reminder to providers of the above noted services, that services rendered to Medicaid Program and Title V eligible Children with Special Health Care Needs (CSHCN) Program are all subject to the same medical necessity criteria and prior authorization requirements (PAR) for private duty nursing (PDN). Coverage for this service continues to be limited to eligible individuals under 21 (through 20) years of age.

The West Virginia Medicaid Program has contracted with West Virginia Medical Institute effective January 1, 2001 to expand the scope of WVMi review for PDN. All PDN services (procedure code W1990) provided to children participating in CSHCN Program (Title V) and Medicaid recipients under age 21 years will require prior authorization from WVMi. This policy does not change the requirements for PAAS primary care referral. All forms attached to the Program Instruction can be photocopied.

BACKGROUND:

This Program Instruction replaces MA-00-38 issued January 1, 2001.

In order to assure that medically necessary and appropriate services are provided to all eligible CSHCN and Medicaid recipients in a cost effective and consistent manner, the following policy and procedures have been implemented.
Program Instruction

POLICY PROVISION:

In the past, the physician's order and documentation for private duty nursing was submitted to either the Bureau for Medical Services' Case Planning Unit or CSHCN. This policy implements the transfer of the review process to WVMi. The coverage policy and the appeals process for private duty nursing services has not changed. If WVMi denies prior authorization for PDN, a request for reconsideration must be requested from WVMi before an appeal can be requested from CSHCN or BMS/Medicaid. All PDN services offered to eligible Medicaid and CSHCN recipients must be reviewed and authorized by WVMi before reimbursement for services will be considered. This includes the initial request for private duty nursing, as well as the continuation of services offered after the policy effective date.

The following screening criteria will be used for private duty nursing services:

SCREENING CRITERIA FOR PRIVATE DUTY NURSING SERVICES

I. PURPOSE

Private Duty Nursing is considered **supportive** to the care provided to an individual by the individual's family, foster parents, and/or delegated caregivers, as applicable. Nursing services shall be based on medical necessity. Increases or decreases in the level of care and number of hours or visits authorized shall be based on a change in the condition of the individual, limitation of the program, and the ability of the family, foster parents, or delegated caregivers to provide care.

II. DEFINITIONS

Activities of daily living (ADLs): Activities usually performed in the course of a normal day in an individual's life, such as eating, dressing, bathing and personal hygiene, mobility, bowel and bladder control.

Admission: Acceptance of the individual into the private duty nursing program contingent upon meeting the criteria.

Family/In-home Caregiver: Any person who assumes a portion of the individual's nursing care in the home, when Private Duty Nursing staff are not present. Family/in-home caregivers may live in the individual's home, or may come to the individual's home to provide care.

Home: A place of temporary or permanent residence, not including a hospital, ICF/MR, nursing facility, or licensed residential care facility.

Initial Hospital Discharge: First hospital discharge that occurs after the individual's birth or the first hospital discharge after the onset of the condition that resulted in the need for Private Duty Nursing.

Length of time: Definite assignment of time for services *not to exceed* sixty (60) calendar days.

Maintenance care: Level of care needed when the goals and objectives of the care plan are reached and the condition of the individual is stable/predictable. For the mechanical ventilated individual, stable condition will be evidenced by ability to clear secretions from tracheostomy, vital signs stable, blood gases stable with oxygen greater than 92%, and the pulse oximetry greater than 92%, the plan of care does not require the skills of a licensed nurse in continuous attendance, or the individual, family, foster parents, or caregivers have been taught and have demonstrated the skills and abilities to carry out the plan of care.

Private Duty Nursing: Face-to-face skilled nursing that is more individualized and continuous than the nursing that is available under the home health benefit or routinely provided in a hospital or nursing facility.

Plan of care: Written instructions detailing services the individual will receive. The plan is initiated by the Private Duty Nurse or nursing agency with input from the prescribing physician.

Re-hospitalization: Any hospital admission that occurs after the initial hospitalization as defined above.

Respite: Short term or intermittent care and supervision in order to provide an interval of rest or relief to family or caregivers.

Skilled Nursing: Services provided under the licensure, scope and standards of the West Virginia Nurse Practice Act, by a Registered Nurse (RN) under the direction of a physician, or a Licensed Practical Nurse (LPN) under the supervision of a Registered Nurse and the direction of a physician.

III. PATIENTS CURRENTLY RECEIVING PRIVATE DUTY NURSING:

Any individual who is receiving Medicaid/CSHCN private duty nursing prior to December 1, 2001 who is determined in accordance with the medical criteria to be medically ineligible for private duty nursing, or eligible for fewer hours of private duty nursing than those currently being provided shall be continued at the same level until an alternate care plan is in place, but no longer than six (6) months after the determination. A nurse from BMS or CSHCN will work with the home health case coordinator, the family and physician to develop the alternate care plan.

IV. PRIVATE DUTY NURSING SERVICES: requires **all of the following** (A 1 - 6, B 1 - 14) *submitted within seven (7) working days prior to the start of care date:*

- A. Physician's Plan of Care (signed and dated) with all of the following: (1 - 6)
 - 1. Diagnosis and procedure; (include 485)
 - 2. Medical history;
 - 3. Prognosis (include specific expectations for individual's diagnosis and condition);
 - 4. Approximate length of time Private Duty Nursing services will be needed;

5. Medical justification for services requested, including orders;
 6. Documentation that an individual is medically stable, except for acute episodes that Private Duty Nursing can manage.
- B. Plan of care - documentation of a comprehensive assessment of individual's capabilities including **all of the following:** (1 - 14)
1. Proposed start of care date;
 2. Diagnosis and procedures with ICD-9-CM codes;
 3. Justification for skilled nursing services eight (8) hours or more in a 24-hour period. Description of needs must include interventions, measurable objectives, short and long term goals with timeframes;
 4. Medications, (new or changed) including dose, frequency and route;
 5. Technology dependent:
 - a. Ventilator dependent **and one of the following:** (1 or 2)
 1. Mechanical ventilator support is necessary for at least eight (8) hours per day and not at maintenance level; or
 2. Oxygen supplementation for ventilator dependent individuals at or below an inspired fraction of 40% (FI02 of 0.40).

PHYSICIAN REVIEW REQUIRED:

- ***Ventilator dependent: if indicators (5 a 1or 2) are not met and individual also requires one or more of the following indicators (5 b, c, d or e)***
 - ***Non-ventilator dependent: if one or more indicators (5 b, c, d, or e) are required***
- b. Non-ventilator: Tracheostomy care requires documentation of site appearance, type/frequency of wound care/dressing changes and description of any drainage around site. Also, record frequency of suctioning, including amount, color, consistency of secretions;
 - c. Oxygen: documentation required concerning rapid desaturation without oxygen;
 - d. Tube feedings: (NG tube, G-tube and J-tube) requires type and frequency of product given. Also include bolus feeding or continuous infusion via pump;

- e. Intravenous Infusions: Intravenous Infusions, including Total Parenteral Nutrition (TPN), medications and fluids requires documentation of type of line, site, dose, frequency, and duration of infusion. Also record gravity or pump installation.
- 6. Rehabilitation potential including functional limitations related to ADLs, types/frequency of therapies, and activity limitations per physician order;
- 7. Individual is residing in a home environment;
- 8. Social history: number, names and relationship of family members to the individual. List the family/in-home caregivers that are trained to care for the individual with supplement of Private Duty Nursing and other health professionals;
- 9. Record the family's community support system and any transportation requirement;
- 10. Describe teaching, delegation, assignment of care and availability of Private Duty Nurse;
- 11. Equipment and supplies necessary for the individual's care;
- 12. Acuity and Psychosocial Grid with score meeting **one of the following:**
 - (a, b, c, or d)
 - a. 61 points and above: up to 24-hours per day immediately after discharge from a hospital or if there is a significant worsening or decline of condition;
 - b. 50 - 60 points: up to 16-hours per day immediately after discharge from a hospital or if there is a significant worsening or decline of condition;
 - c. 40 - 49 points: up to 12-hours per day immediately after discharge from a hospital or if there is a significant worsening or decline of condition;
 - d. 30 - 39 points: 8-hours per day, if the score is 24 or above on the Psychosocial Grid **in conjunction with** the 30 - 39 points on the Acuity Grid.

Physician review required if information on the Acuity is less than 30 or the Psychosocial Grid does not support the other clinical information provided.

PLAN OF CARE AND NURSING NOTES MAINTAINED IN THE INDIVIDUAL'S HOME

13. Family/in-home caregiver requirements with **all of the following:** (a, b, and c)

- a. Family must have at least one person trained and fully able to care for individual in the home. Documentation of the demonstration by family/in-home caregiver of specific skills, including Cardiopulmonary Resuscitation (CPR) instruction and certification. A ventilator dependent individual requires availability of two (2) or more trained caregivers;
- b. Family/in-home caregiver ability to maintain a safe home environment, including an emergency plan;
- c. Family/in-home caregiver will work toward maximum independence, including finding and using alternative resources as appropriate.

14. Home environmental requirements with **all of the following:** (a, b, c, d, e, and f)

- a. Adequate electrical power including back-up power system;
- b. Adequate space for equipment and supplies;
- c. Adequate fire safety and adequate exits for medical and other emergencies;
- d. Clean environment to the extent that the individual's life and health is not at risk;
- e. Working telephone available twenty-four (24) hours a day;
- f. Notification to power companies, fire department, and other pertinent agencies of the presence of a special needs person in the household, to ensure appropriate response in case of power outage or other emergency.

V. SIGNIFICANT CHANGE IN CONDITION:

Comprehensive assessments must be updated and submitted to WVM Nurse Reviewer by the next workday after any significant change of condition, e.g., emergency room visit, hospital admission, any change in status that will

increase or decrease services. Also notify WVMi Nurse Reviewer if individual expires or is discharged from PDN services.

VI. EXTENSION OF SERVICES: at least seven (7) working days prior to the expiration of current authorization **all of the following** must be submitted for review (A - H):

A. Daily nursing notes from past thirty (30) days; documentation of Private Duty shift care must be written **at least every hour** on the nursing notes and must include **all of the following**:

1. Name of individual on each page of documentation;
2. Date of service;
3. Time of start and end of service delivery by each caregiver;
4. Anything unusual from the standard plan of care must be explained on the narrative;
5. Interventions;
6. Outcomes including the individual/family's response to services delivered;
7. Nursing assessment of the individual's status and any changes in that status per each working shift;
8. Full signature of provider;

B. Updated plan of care, including new goals and objectives outlined;

C. Updated medical and social information;

D. Progress reports, including individual's potential for discharge with timeframes;

E. Physician's orders for service must be dated within seven (7) days prior to the date of request;

F. Recent, significant clinical findings from physician;

G. Current (within seven (7) working days) completed Acuity Grid;

H. Documentation of delegation, teaching and assignment of care

VII. PROGRAM EXCLUSIONS:

1. Individual is residing in a nursing facility, hospital, residential care facility, intermediate care facility for developmental disabilities ICF/MR or personal care home at the time of delivery of Private Duty Nursing services;
2. Care solely to allow the individual's family or caregiver to work or go to school;
3. Care solely to allow respite for caregivers or individual's family;
4. Care at maintenance level;
5. Only the agency authorized to provide the PDN services can bill. If the agency finds it necessary to subcontract services due to staffing needs, the subcontractor cannot bill Medicaid.
6. Private Duty Nursing Services for individuals 21 years of age or older.

VIII. CONCLUSION OF LAW:

- 1) Policy stipulates that Medicaid Program and Title V eligible Children with Special Health Care Needs (CSHCN) Program recipients are all subject to the same medical necessity criteria and prior authorization requirements (PAR) for private duty nursing (PDN). All PDN services offered to eligible Medicaid and CSHCN recipients must be reviewed and authorized by WVMi before reimbursement for services will be considered. This includes the initial request for PDN, as well as the continuation of services offered after the policy effective date. PDN is defined as face-to-face skilled nursing that is more individualized and continuous than the nursing that is available under the home health benefit or routinely provided in a hospital or nursing facility. Program exclusions include respite care, maintenance level care or care to allow an individual's family or caregiver to work or go to school.
- 2) The evidence submitted in this case fails to demonstrate the Claimant requires continuous face-to-face skilled nursing services. While it is noted that the Claimant's mother has a medical condition that limits her ability to provide continuous care, the Claimant's father acknowledged that he cares for his son on the weekends. Moreover, there were no specific skilled nursing tasks noted by the Claimant's representatives to indicate medical necessity.
- 3) Whereas the evidence demonstrates the Claimant requires care at a maintenance level, and neither respite care nor care to allow the Claimant's father to attend work is authorized, the Department is correct in its decision to deny prior authorization for PDN.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's denial of prior authorization for Private Duty Nursing services for the Claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of November, 2011.

Thomas E. Arnett
State Hearing Officer