

This matter arises from United Healthcare's (United) January 13, 2021 termination of Petitioner's Private Duty Nursing (PDN) Services, consisting of ten hours per day, five days per week. Petitioner chose to pursue an external appeal through the Department of Banking and Insurance's (DOBI) independent utilization review organization (IURO) process. N.J.A.C. 11:24-8.7(a). The IURO determines whether the United's determination was correct, and if it was not, the IURO must identify the appropriate services for the member. N.J.A.C. 11:24-8.7(k). The IURO's decision is binding on United. N.J.A.C. 11:24-8.7(j). The IURO conducted the review pursuant to DOBI's rules and regulations. See N.J.A.C. 11:24-8.7. On January 26, 2021, the IURO issued its determination upholding United's decision to deny Petitioner's request for PDN services because they are no longer medically necessary.

On or about February 18, 2021, Petitioner requested a Medicaid fair hearing on the same issue. On February 19, 2021, the matter was transmitted to the OAL. On July 6, 2022, the record closed and on August 16, 2022, the OAL issued an Initial Decision. Based upon my review of the record, I hereby ADOPT the Initial Decision affirming United's decision to terminate Petitioner's PDN services. The ALJ affirmed both United's and the IURO's determination, and I find no reason to disturb that decision.

Petitioner is a minor child who had been receiving private duty nursing (PDN) under the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) program since June 2018. Under this program, children under the age of 21 are eligible to receive any medically necessary service, including PDN. Licensed nurses, employed by a licensed agency or healthcare services firm approved by DMAHS, may provide PDN services in the home to beneficiaries receiving managed long-term support services (MLTSS) and 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 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.

Medical Director Dr. Amy Aronsky testified on behalf of United. She reviewed the Petitioner’s medical records and documentation to determine if the request for PDN services was medically necessary. Petitioner is not dependent on a mechanical vent, a tracheotomy, a gastrostomy feeding, or the need for deep suctioning. Additionally, there is no evidence that Petitioner suffers from a seizure disorder. Finally, while she does use a nebulizer, the treatments are not provided around the clock as required by N.J.A.C. 10:60-5.4(b).

Based upon my review of the record, I agree with the Administrative Law Judge that the provision of private duty nursing services is not warranted in this case because Petitioner does not require complex, continuous skilled care on a routine basis. I FIND that United correctly determined that Petitioner was no longer eligible for PDN services.

THEREFORE, it is on this 25th day of OCTOBER, 2022

ORDERED:

That the Initial Decision is hereby ADOPTED.



Jennifer Langer Jacobs, Director
Division of Medical Assistance
and Health Services