

Medical Services Board (MSB) Questions From Stakeholders and Department of Health Care Policy and Financing (Department) Responses

MSB Date: November 18, 2022

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Topic: Administrative Approval Process and Denial Notice Confusion

- **Comment:** I wanted to reiterate the confusion with communication to parents from KEPRO/Colorado Access. I received phone calls stating a decrease in hours after my confusing letters. At one point a Medicaid doctor phoned my medically complex Children's nutritionist and communicated to us through her a temporary 3 month approval of hours. I'm receiving communications from so many agencies through so many avenues. It's stress inducing and information overload that doesn't clear anything up.
 - **Response:** We are sorry to hear that the communication has been overwhelming and stressful. The Department is having Kepro send communications directly to families to reduce the need for families to look for updates. All formal communication for families regarding the Private Duty Nursing (PDN) Prior Authorization Request (PAR) administrative process will be sent this way. If you receive any further communication that you would like to discuss please do not hesitate to reach out to us directly at homehealth@state.co.us.
- **Question:** Would the department please publish the feedback from the MEAC regarding the notices when they conduct that process? That way it will not happen behind closed doors, there is increased transparency, and it is clear what the MEAC suggests, and whether their suggestions were taken into account. Without knowing that, I fear a continued lack of trust.
 - **Response:** The Department will publish the feedback received from the Member Experience Advisory Council (MEAC) on the Private Duty Nursing (PDN) webpage. For more information visit hcpf.colorado.gov/meac.
- **Comment:** The November 30th date is not helpful for our agencies and consumers. We are going into the holidays, and most of us are still confused about what documentation HCPF wants anyway.

- **Response:** The November 30th date was intended to provide the provider agencies a timeline and the Department enough time to review all additional paperwork. Due to the ongoing conversations and training with providers, the Department has extended the submission timeline to ensure the providers have the appropriate time and understanding to submit a clear, detailed plan of care supporting all requested hours.

Topic: Eligibility Criteria and Documentation

- **Question:** How can agencies be trained with no criteria in place?? This is illegal and a waste of resources. Pause the PAR Fix it in rule, then train.
 - **Response:** The Department is training agencies using the rules for skilled nursing, both Private Duty Nursing (PDN) and intermittent. Rule 8.540 Private Duty Nursing (PDN) means face-to-face Skilled Nursing that is more individualized and continuous than the nursing care that is available under the home health benefit or routinely provided in a hospital or nursing facility. Training includes an overview of the rules, the definition of medical necessity, timely submission rules, potential outcomes, ways to request reconsiderations and peer-to-peer reviews, required and recommended pertinent documents required as part of the medical necessity review, expected turn-around-times (TAT) and technical submission details. To date the home health care agencies have been quite receptive and have provided the Department with insights on improving the Prior Authorization Process (PAR) process.
- **Question:** A major issue identified is that there is apparently a different tool or outline KEPRO is using to determine the hours/ need for pediatrics. When speaking with Candice this is going to take several years to have in place but this 'pause' is to correct administrative issues. Without clear guidelines how can this be corrected and when?
 - **Response:** There is not a different tool used by Kepro. The current Private Duty Nursing (PDN) tool is one component utilized by the Utilization Management (UM) vendor to render a medical necessity determination. Home health agencies should submit documentation within the plan of care on the services a nurse will perform directly related to the items indicated on the tool. If the member has physician ordered interventions identified on the PDN tool, the agency should submit recent and pertinent medical records from treating providers with the most current recommendations.

- **Question:** Why are children denied for “required documentation” that has never been necessary before?
 - **Response:** The Department is required to follow 10 CCR 2505-10; 8.076.1, Definition of Medical Necessity and to contract with a Utilization Review Contractor. Private Duty Nursing (PDN) Prior Authorization Request (PAR) requirements include a physician's plan of treatment and the home health agencies required plan of care, created in collaboration with the family and agreed upon with the treating physician. Submission of pertinent medical records has always been the expectation with PAR submissions in order to review for medical necessity.

- **Question:** During the Children's Disability Advisory Committee on 11-9-22 it was shared that there was a state budget request for clinical and policy expert staff additions to increase understanding of EPSDT. How can PARs be effectively re-reviewed if those reviewing are not yet adequately trained on EPSDT as noted by HCPF?
 - **Response:** The Department’s clinical team is trained on Early and Periodic Screening, Diagnostic and Treatment (EPSDT) as it applies to prior authorization and medical necessity determinations. The budget request referenced at the Children’s Disability Advisory Committee (CDAC) includes an expansion of the total number of staff, both clinical and policy experts, fully dedicated to EPSDT-related work. If funded, these additional positions will specifically provide extra focus and support for children and youth with intellectual and developmental delays or disabilities who have very high medical and/or behavior support needs, or are involved in multiple state and local systems, such as behavioral health, education supports, juvenile justice, and the child welfare system.

- **Question:** Additionally how do you know what is wrong if you haven’t figured out what the criteria and rules are?
 - **Response:** The Department has both an approved State Plan Amendment (SPA) and regulations that outline the provisions of Private Duty Nursing (PDN) services. Home health agencies are required to follow all Department regulations and current training has been tailored to assist agencies in the Prior Authorization Request (PAR) submission process. The Department utilizes medical experts with extensive experience in home health as well as pediatricians, employed by the utilization review contractor, to assess each submission individually and identify how the plan of care, and pertinent medical records, meet the

provisions of the rules for PDN and intermittent skilled nursing as well as identifying potential complementary services such as long term home health. All PARs are reviewed under Early and Periodic Screening, Diagnostic and Treatment (EPSDT) on a case-by-case or individualized basis. Pertinent medical records identify the unique needs of clients and allow for individualization in compliance with EPSDT.

Topic: Agency Trainings

- **Question:** Could the Department please publish those trainings/guardrails that Adela mentioned that they provide to agencies on how to determine medical necessity?
 - **Response:** The Department's [ColoradoPAR web page](#) outlines the Private Duty Nursing (PDN) benefit and links to the Regulations 10 CCR 2505-10 8.540. In addition, medical necessity definitions for children and adults are contained in the Department's rules at 10 CCR 2505-10, Sections 8.280.4.E. and 8.076, respectively.
- **Comment:** There is also a date of 11/30 for “step down” So 12 days away with agencies that have not received training.
 - **Response:** The Department has met with four (4) agencies, with the highest number of denials, and is continuing with agencies who submit Prior Authorization Requests (PARs). Following the training, outreach continues to facilitate resubmission of cases based upon the agencies' plans for resubmission. In addition, the November 30, 2022 date is no longer applicable as all administrative approvals have been extended through February 28, 2023, in order to provide agencies and families time to submit plans of care supporting the medical necessity of the hours requested.
- **Question:** By the next MSB meeting step down denials will have to have been inputted to Kepro! Can we get a date for that batch of children first?
 - **Response:** Since the Department has extended the administrative approval through February 28th, all requested services are approved until then. The Department continues to work on updating notices and working with providers to ensure all necessary documentation is submitted. Once this is completed, both the revised notices and the additional review, then approvals and denials will begin to be sent.

Topic: MSB and Rule Authority

- **Question:** What action would be required to submit a rule to pause the par? So the board could be voted on.
 - **Response:** Rulemaking is governed by Colorado Revised Statute 24-4-103.
- **Question:** Adele just stated that they are reforming their process... isn't reform of a program policy driven? I still don't understand how can HCPF potentially deny services to clients in the midst of reform and rule changes without violating their rights?
 - **Response:** Process reform does not have to be driven by a change in policy and in this case is being done in accordance with existing policy and in response to identified issues. The Department has both an approved State Plan Amendment (SPA) and regulations that outline the provisions of Private Duty Nursing (PDN) services. Home health agencies are required to follow all Department regulations and current training has been tailored to assist home health providers in understanding the Prior Authorization Request (PAR) submission process. The Department relies on medical experts, both from the home health agency and employed by the vendor Kepro to review medical documentation to determine what is needed for the individual member. The criteria used considers the submitted plan of care and determines what is clinically appropriate in terms of type, frequency, extent, site, and duration and is provided in accordance with generally accepted professional standards for health care in the United States.

Topic: External Office Involvement

- **Question:** What is the position of the Attorney General Office concerning issues related to the criteria, notice, and due process?
 - **Response:** The Department of Health Care Policy and Financing (Department) cannot speak for the Attorney General's Office. The Department regularly consults with its attorneys on legal compliance matters.
- **Comment:** It seems that the Department is exercising power that properly belongs with Colorado's Legislative and/or the Judicial branches.

- **Response:** Administering Medicaid benefits, including performing federally-mandated utilization management, falls within the purview of the Department as the single state Medicaid agency.

Topic: Workforce

- **Question:** What is the state doing to fix the lack of nurses available for PDN. We've been on wait lists for nearly 5 years and still no nurse for our daughter.
 - **Response:** Colorado is dedicated to improving the health care workforce. Several recent bills focus on expanding the State's nursing workforce. The efforts include fee relief for nurses and nurse aids (HB 22-1298), re-engagement grants for licensed nurses, full tuition assistance for CNAs (SB 22-226), and building streamlined pathways for Licensed Practical Nurses (LPNs) to earn their Bachelor of Science in Nursing (BSN). Additionally, through American Rescue Plan Act (ARPA) funds, the Department of Health Care Policy and Financing (Department) offers training grants to Home and Community-Based Services (HCBS) and Long Term Home Health (LTHH) providers that support specialization and advancement opportunities, including Certified Nursing Assistants (CNAs). The nursing shortage is something Colorado takes very seriously and as a result is investing in all areas to help improve the situation.

Topic: Data

- **Question:** Will [HCPF] put out the data or make public the denials by numbers they have used for their statistics?
 - **Response:** The Department will share data on PDN denials.