



Refer to: MCD-O-RRG

F-131  
JAN 21 1992

Region IX  
76 Hawthorn Street  
San Francisco, CA 94 105

**Anne Ronan**  
Staff Attorney  
Arizona Center for Law in the Public Interest  
3724 North Third Street, Suite 300  
Phoenix,, Arizona 85011

**Dear Ms. Ronan:**

This is in response to your letter of December 6, 1991 regarding skilled nursing services for ventilator dependent **children**.

There is no specific HCFA policy concerning the provision of skilled nursing services to such children. However, any child eligible for AHCCCS or ALTCS is entitled to all medically necessary services covered under the State Plan. Under the EPSDT provisions, he or, she is also entitled to **other necessary health care, diagnostic treatment and other measures** described in Section 1905(a) of the Social Security Act to correct or ameliorate defects and physical and mental illness and conditions discovered by the screening services, whether or not such services are covered under the State Medicaid Plan."

The issue of whether the parents are at home or at work is not relevant to the issue of medical necessity. Each of these cases must be evaluated on an individual basis to determine medical necessity as well as the least costly level of care, i.e., if several hours of daily skilled nursing services are necessary, is the home or an institution most appropriate. We encourage any recipients or their families who believe they are not receiving all services to which they are entitled to use the appeals process.

This situation was discussed with members of AHCCCS' staff. They stated that they are developing formal policy in this area. We have solicited input from you and other interested parties as they review the DES policy for approval. If you have any questions, please call Rosada Gonzales at (415) 744-3597.

Sincerely,

Lawrence L. McDonough  
Associate Regional Administrator  
Division of Medicaid

cc: Leonard J. Kirschner, M.D., M.P.H.



ARIZONA DEPARTMENT OF ECONOMIC SECURITY  
1717 W. Jefferson • P.O. Box 6123 • Phoenix, AZ 85005

Fife Symington  
Governor

Linda Moore-Cannon  
Director

October 21, 1991

Terence and **Lisbeth** Pilon  
326 West **Lawrence Lane**  
Phoenix, Arizona 85021

Ret Chase Pilon, I. D. No. **600-28-9147**  
DDD Grievance No. **M-856**

Dear **Mr.** and **Ms. Pilon:**

Your grievance regarding termination of **skilled** nursing for Chase when a parent is not at home and the requirement to **obtain** prescriptions for continuation of Chase's **therapies** has **been reviewed.**

**Findings:**

1. On September 18, 1991, a **grievance was filed** directly with the Division of **Developmental Disabilities** (DDD) office of Compliance and **Review (OCR)** in **response** to a Notice of Intended Action received on **September 10, 1991.** **Ms. Pilon stated Chase is ventilator** dependent. The Notice of **Intended** Action received proposed termination of **Chase's skilled nursing when a parent is not at home.** **Additionally,** a **new** prescription for **physical therapy** and occupational therapy for **Chase was requested by** the District. **Ms. Pilon stated this does not make sense.**
2. **Liz Francati, District I Area Program Manager,** responded to the **grievance on October 3, 1991, by stating** that a Notice of Intended Action dated **September 10, 1991, was** sent to **Mr. and Mrs. Pilon** informing **them** that the **Division was terminating "30 hours skilled nursing** care used for daycare effective **30 days from the date of this** letter. **This intended action letter also specified that** the **reasons for this action were:** "The present usage of **skilled nursing to meet your day care needs is in** violation of both **AECCCS and Federal Medicaid standards.**" **Chase's skilled nursing needs that meet both AXCCCS and** **Federal Medicaid standards will be reassessed at our**

Terence and **Lisbeth Pilon**  
October 21, 1991

-2-

**meeting** on September 16, 1991. A service review was conducted by Vent Dependent **Nurse**, Kathy Reynolds, Case Manager, Sylvia Smith, and Regional Nurse, Beverly **Ivener**, on **September 20**, 1991. The results of this **service** review supported Chase's need for 30 hours per week of **skilled** nursing. This need was presented by Beverly and Sylvia at the service review on September 23, 1991. The question posed to **Beverly** was, "Per your **assessment**, when should the skilled nursing be provided for Chase"? Beverly **indicated** that these **services** should be provided at night. SRC then **authorized** 30 hours per week of **skilled nursing at night** for Chase. Beverly informed SRC members that the **parents** did not wish to use **the** nursing at night.

In regard to occupational and physical **therapies**, no intended action **has been** taken on these services. However, the current **prior** authorization for these **services** expired on September 30. Prior **authorization** was provided for a three-month period. If therapy were requested beyond the **three months**, the following must be **provided** before consideration of additional therapy could **be given**: **progress** reports from the therapist must **be submitted** that include the **progress** made during the three months, the need for additional therapy, the goals of future **therapy**, a description of the home **program** developed for the family **members** to administer, and a **report** of the **family's** participation in **therapy**. The family shall **request** an IEP from **the school** that will identify the school's participation **in** the provision of **therapy services** for this child. Any therapy **service** provided after school **begins** in the Fall of 1991 should **be** a cooperative effort **between** the school and the Division.

As of **this** date, **October 3**, 1991, **all required components** are not on file, **thus** we cannot proceed with **determining** **if** continuing therapy **services** are needed.

3. In researching **this** grievance, the DDD Office of Compliance and Review finds that nursing care **is** not to be **used** as day care. **Title XIX is not permitted** to pay for certain **services**, including day care. It is the position of **the federal government** that child care during working hours **is** the responsibility of the **wage earner**. For low income **workers**, the **federal and state governments** maintain a **subsidized** day care **program** which **is** available through the Arizona Department of **Economic Security**.

Terence and Lisbeth Pilon -3-  
October 21, 1991

The District is responsible also to enforce its policy that a parent/guardian must be at home while nursing is provided. A Utilization Review Report dated April 10, 1991, states, in part: "The review team identified issues that APM's should consider in approving utilization of personal care and skilled nursing services. When the primary caregivers or designated alternates are not present -- the service need is not personal care or nursing -- it is RESPITE." (Emphasis added)

This does not preclude Chase from receiving services that may be medically necessary.

The DDD Office of Compliance and Review secured a copy of Dr. David Hirsch's April 19, 1991, prescription for occupational and physical therapies. Dr. Hirsch requires an evaluation every six months to assess Chase's progress.

The information obtained indicates Chase, in addition to coverage with APIPA, is covered under another health insurance Policy 1918860007, Policy holder: Terence Pilon, Employer; Valley National Bank, with Pacific Mutual, 234 North Central Avenue, Suite 550, Phoenix, Arizona 85004, 602-254-5311.

Review of the ALTCS Program Management Manual, Chapter: Case Management Procedures, in 331, Client Responsibilities, states, in part:

Each ALTCS client must meet his or her responsibilities as ALTCS recipients. These responsibilities include at least the following:

- A. The responsibility for providing, to the best of his or her knowledge, accurate and complete information about present complaints, past illnesses and hospitalizations, medications, and other matters relating to his or her health;
- B. The responsibility for reporting unexpected changes in his or her condition to the responsible practitioner;
- C. The responsibility for making it known whether he or she clearly comprehends a contemplated course of action and what is expected of him or her;

Terence and Lisbeth Pilon  
October 21, 1991

-4-

- D. The responsibility for following the treatment plan **recommended** by the practitioner primarily **responsible** for his or her: **care** and for following facility or **ALTCS** policies and **procedures** affecting client care and conduct; this responsibility includes following the instructions of nurses and **other** health professionals **as** they carry out the **coordinated** plan of care and implement the **responsible** practitioner's orders and as they **enforce** the applicable facility of ALTCS rules and regulations.
- E. The responsibility for his or her actions if treatment **is** refused or if the practitioner's instructions are not followed . . . .

The District's intent to **convene all** participants of Chase's therapies is appropriate. **It is** suggested the **parents** provide **information** to the participants concerning therapies available under health **insurance** coverage **with** Pacific Mutual.

**Decision:**

Based upon the foregoing **Findings**, the decision by District I to require a parent in the **home during the provision** of skilled nursing is affirmed. The District's **decision** to **require a new prescription for Chase's** therapies is also **affirmed** and **conforms** to Dr. **Hirsch's** instructions.

If the **grievant to this decision is** not **satisfied** with the **decision**, a written **appeal** for a hearing with the **AECCCS** Office of Appeals **may be filed** with:

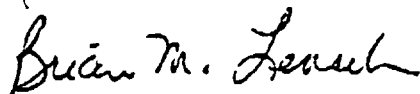
**Division of Developmental Disabilities**  
**Compliance and Review**  
P. O. Box 6123, Site Code 791A  
Phoenix, Arizona 85005.

The appeal will be forwarded to the **AECCCS** Office of Appeals by this office. The appeal **must be** in writing and the letter received by Compliance and Review no later than fifteen (15) **days** after the **postmark** date of **this** grievance decision letter.

Terence and **Lisbeth Pilon**  
October 21, 1991

-5-

Sincerely,



Brian **M.** Lensch  
Acting Assistant Director, **DES**  
Division of Developmental **Disabilities**

**BML/ES/ct**

**c:** David **Lara, 100A**  
Diana **Espinoza, 100A**  
Shirley **Patridge, 161F**  
Liz **Francati, 161P**  
Sylvia **Smith, 135F**  
Ileen **Herberg, 135F**  
Helen **Baldino, A.G.'s Office, 040A**