



The Right to Medically Necessary Treatment for Florida's Children

Background: Under the federal Medicaid Act, children enrolled in Medicaid are entitled to Early and Periodic Screening, Diagnosis and Treatment Services (also referred to as EPSDT.) In addition to specifying a comprehensive set of benefits, like periodic screenings and vision, dental and hearing services, the federal law also establishes a standard of “medical necessity” that applies in determining whether a prescribed Medicaid service for an individual child must be covered.

This fact sheet compares the federal standard of medical necessity for children with Florida's standard; cites state court decisions finding that Florida's standard for medical necessity is overly restrictive for children; and provides contact information for parents and providers if a child/patient has been denied coverage of a service that the pediatrician believes is medically necessary.

Federal standard of medical necessity for children: For child Medicaid enrollees, states must cover “necessary health care, diagnostic services, treatment and other measures...*to correct or ameliorate* defects and physical and mental illnesses and conditions...”. 42 U.S.C. §1396d(r)(5). There are only a few, narrow limitations to the EPSDT coverage mandate:

- The benefit or service must fall within Medicaid's scope: EPSDT requires the state to cover all mandatory and optional services that the state can cover under Medicaid, whether or not such services are covered for adults. *See* 42 U.S.C. 1396d(a)(listing the scope of benefits).
- The requested benefit or service cannot be experimental or investigational.
- Less costly benefits or services can be covered but must be equally effective.

For example, if a child needs an hour of physical therapy (a service that falls within Medicaid's optional coverage scope) twice a week for 6 months to correct or ameliorate a health problem, then EPSDT requires the Medicaid agency (or Medicaid managed care plan) to cover the service.

Florida's standard of medical necessity for children: In determining medical necessity, Florida applies the standard set forth in the state's definition of medical necessity under Rule 59G-1.010, F.A.C. Among other things, the Florida standard for determining medical necessity requires that the prescribed service be: “necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain.” Florida applies the same standard to both children and adults.

Florida's standard of medical necessity for children is overly restrictive: Florida state courts have repeatedly found that Florida's definition of medical necessity for children is overly restrictive and, as a result, ordered that the child's requested benefit or service be covered by Florida's Medicaid program. *See, C.F. v. Department of Children and Families*, 934 So. 2d 1, 7 (Fla.3d DCA 2005)(in evaluating whether a state agency correctly analyzed a child's need for Medicaid services under Fla. Admin. Code R. 59G-1.010, the court held that the agency "incorrectly used more restrictive definitions of medical necessity' ...than federal law requires."); *see also, Q.H. v. Sunshine State Health Plan*, 307 So.3d 1, 12 (Fla. 4th DCA 2020)(finding that "under the EPSDT, the state's assessment of medical need for a child's treatment 'cannot be limited to a predefined list of criteria.' "(citations omitted) ; *I.B. v. AHCA*, 87 So.3d 6 (Fla. 3d DCA 2012);*E.B. v. AHCA*, 94 So.3d 708 (Fla.4th DCA 2012).

What should happen if a child's healthcare provider has a different opinion about medical necessity than the Medicaid managed care plan or Agency? While both the Agency or managed care plan and the prescribing physician have a role to play in determining medical necessity, if the service (including the prescribed *amount* of the service, e.g. twice a week for 6 months) falls within Medicaid's scope of benefits, then the federal "correct or ameliorate" standard must apply.

If a child/patient has been denied coverage of a service the pediatrician believes is medically necessary, please contact Florida Health Justice Project through our website at: <https://www.floridahealthstories.org/contact>. Please also feel free to contact Miriam Harmatz or Katy DeBriere directly, harmatz@floridahealthjustice.org, debriere@floridahealthjustice.org.