

CHANGES TO TEXAS MEDICAID THAT AFFECT BENEFICIARIES UNDER THE AGE OF 21

THE *ALBERTO N.* SETTLEMENT AGREEMENT



7800 Shoal Creek Blvd.

Suite 171-E

Austin, Texas 78757

Phone (512) 454-4816 (voice)

Fax (512) 323-0902

www.DisabilityRightsTx.org

Q. Who filed the lawsuit, and what was it about?

A. The lawsuit was filed in federal court in Tyler, Texas by Alberto N. and seven other Medicaid beneficiaries under the age of 21. They sued Texas Medicaid, claiming that it failed to provide Medicaid Beneficiaries under the age of 21 with all medically necessary Durable Medical Equipment and Supplies, Nursing services, and Personal Care services, in violation of federal law.

Q. When did the lawsuit settle?

A. Texas Medicaid and the Plaintiffs reached a Settlement Agreement in May 2005. The Settlement Agreement was approved by the Court on June 23, 2005.

Q. Who benefits from the changes to Texas Medicaid required by the Settlement Agreement?

A. Only Medicaid Beneficiaries under the age of 21 who have been determined eligible to participate in the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program, which in Texas is known as Texas Health Steps (THSteps). Most Medicaid Beneficiaries under the age of 21 are eligible for EPSDT. There are a few exceptions; for example, there are some children and young adults who only qualify for Emergency services. Beneficiaries under the age of 21 who participate in Home and Community-Based Waiver programs (for example, CLASS, MDCP, HCS) ARE also eligible for EPSDT services.

Q. What is EPSDT (THSteps)?

A. Medicaid beneficiaries under the age of 21 are entitled to Medicaid EPSDT services. EPSDT is a comprehensive benefit package, and covered services include all mandatory and optional services that the state can cover under Medicaid, whether or not these services are covered for adults. EPSDT services must include “necessary health care, diagnostic services, treatment, and other measures . . . to correct or ameliorate defects and physical and mental illnesses and conditions.” This requirement is very broad and is intended to make sure that Beneficiaries under the age of 21 get ALL medically necessary services.

Q. What EPSDT services are affected by the Settlement Agreement?

A. Durable Medical Equipment and Supplies, Nursing services, and Personal Care services.

Q. Do Medicaid Beneficiaries under the age of 21 who receive their EPSDT services from a Managed Care Organization also benefit from the changes required by the Settlement Agreement?

A. YES, Medicaid Managed Care Organizations must comply with the terms of the Settlement Agreement.

Q. Are Beneficiaries under the age of 21 entitled to all medically necessary Durable Medical Equipment and Supplies, Nursing services, and Personal Care services?

A. YES, Texas Medicaid must provide Beneficiaries under the age of 21 with all medically necessary Durable Medical Equipment and Supplies, Nursing services, and Personal Care services.

DURABLE MEDICAL EQUIPMENT AND SUPPLIES (DME)

Q. What is DME?

A. DME includes medical equipment, medical supplies, and appliances.

Q. When is DME medically necessary?

A. “DME is medically necessary when it is required to correct or ameliorate disabilities or physical and mental illnesses or conditions.” To “ameliorate” a condition or illness does not mean that the condition or illness has to “improve.” DME is medically necessary when it maintains health, by preventing conditions from getting worse, or by preventing the development of additional health problems. In other words, Beneficiaries should receive whatever services, including DME, that are necessary to maintain his or her health in the best possible condition.

Q. Can Texas Medicaid have a limit or cap on the amount of DME available to Beneficiaries under the age of 21?

A. NO. You may hear about, or read Texas Medicaid policies that say that there are numerical limits on the amount of a particular item of DME, for example, limits on diapers. However, for beneficiaries under the age of 21, those limits may be exceeded if medically necessary.

Q. Can Texas Medicaid have a limit on the frequency of replacement of DME available to Beneficiaries under the age of 21?

A. NO. You may hear about, or read Texas Medicaid policies that say there are strict time periods for replacement of DME, for example, that wheelchairs can only be replaced once every five years. However, those time periods will not apply to Beneficiaries under the age of 21 if the replacement item is medically necessary.

Q. What if the DME requested is not on Texas Medicaid’s DME “list”?

A. While Texas Medicaid may have a “list” of DME for items it will more quickly approve, Beneficiaries may request items of DME not found on Texas Medicaid’s list if the requested item is medically necessary. Requests for DME are made in the same manner whether the requested item is on the DME list or not. If the DME provider you are working with tells you that Beneficiaries can only get items that are on a list or in the Texas Medicaid Providers Procedures Manual, please ask the provider to read the *Alberto N. Settlement Agreement* found at www.DisabilityRightsTx.org.

Q. Can Texas Medicaid deny a Beneficiary’s request for DME based only on the Beneficiary’s diagnosis?

A. NO. Texas Medicaid may not deny or reduce the amount, duration, or scope of DME to a Beneficiary under the age of 21 solely because of the Beneficiary’s diagnosis, type of illness, conditions, or functional limitations that are unrelated to the medical necessity of the item. This means that, if the Beneficiary has a medical need for the equipment, they cannot be denied the equipment just because they do not have a particular diagnosis.

Q. Is DME available to a Beneficiary under the age of 21 if the Beneficiary lives in an institutional setting?

A. YES. DME is a covered benefit whether the Beneficiary resides in the community or in an institutional setting, such as a nursing home, state mental retardation facility (state school), or ICF/MR.

Q. Can I find out what standards Texas Medicaid will use to decide if the requested item of DME is medically necessary?

A. YES. Texas Medicaid must make available to Beneficiaries and Providers all DME standards, and a description of the prior authorization process (including a description of the process for obtaining items of DME not found on Texas Medicaid's DME list).

Q. How long does Texas Medicaid have to process my request for DME?

A. Requests for DME will be completed within 3 business days of receipt of a complete request.

PERSONAL CARE SERVICES

Texas Medicaid must implement a New Personal Care services benefit for Beneficiaries under the age of 21 by September 1, 2006.

Q. What are Personal Care services?

A. Personal Care Services are support services provided to Beneficiaries who require assistance with "activities of daily living" (ADLs), "instrumental activities of daily living" (IADLs), and "health related functions" due to physical, cognitive, or behavioral limitations related to their disability or chronic health condition.

Q. What are some examples of ADLs?

A. ADLs include, but are not limited to, eating, toileting, grooming, dressing, bathing, transferring, maintaining continence, positioning, and mobility.

Q. What are some examples of IADLs?

A. IADLs include, but are not limited to, personal hygiene, meal preparation, grocery shopping, light housework, laundry, communication, transportation, and money management.

Q. What are some examples of health related functions?

A. Health related functions include, but are not limited to, medication administration and management, range of motion, exercise, skin care, and use of durable medical equipment. Health related functions also includes record keeping that a PCS worker does when they monitor a Beneficiary's condition.

Q. Can Personal Care services include nurse-delegated services? (Nurse delegated services are services that normally a licensed nurse must provide, but instead can be provided by a non-licensed nurse, under the supervision of a Registered Nurse. For example, sometimes g-tube feeding can be delegated to a non-licensed person.)

A. YES, as permitted by the Texas Nursing Practice Act.

Q. Do Personal Care services include hands-on assistance, cuing, redirecting, or intervening to accomplish the task?

A. YES.

Q. Can Personal Care services be provided on a per-visit basis, as well as on an ongoing basis?

A. YES.

Q. Can Personal Care services be provided outside of the Beneficiary=s home (in the community)?

A. YES.

Q. Besides the Beneficiary’s need for the Personal Care services, what else must Texas Medicaid take into account when authorizing the services?

A. When authorizing Personal Care services, Texas Medicaid must take into account:

- (a) the Parent/Guardian=s need to sleep, work, attend school, and meet their own medical needs;
- (b) the Parent/Guardian=s legal obligation to care for, support, and meet the medical, educational, and psycho-social needs of their other dependents;
- (c) the Parent/Guardian=s physical ability to perform the Personal Care services; and
- (d) whether requiring the Parent/Guardian to perform the Personal Care services will put the Beneficiary=s health or safety in jeopardy.

In general, the new Personal Care services benefit must promote the well-being of the Beneficiary in the context of his or her family and the community.

Q. Can Texas Medicaid deny a Beneficiary’s request for Personal Care services based only on the Beneficiary’s diagnosis?

A. NO. Texas Medicaid may not deny authorization of Personal Care services or reduce the number of requested hours of services solely because of the Beneficiary’s diagnosis, type of illness, or condition. This means that there is not a list of diagnoses that are considered the only diagnoses eligible for the service. It also means that Beneficiaries who have a need for support with the kinds of activities described above can obtain PCS even if their needs are related to a cognitive disability or to behavioral limitations that are a result of their disability.

Q. How does Texas Medicaid decide whether to authorize PCS services?

A. In the past, Texas Medicaid authorized services based on a strict guideline that estimated how many minutes it took to perform a limited list of tasks. It did not base authorization on when the Beneficiary needed assistance and it did not take into consideration that many Beneficiaries need assistance over a span of time, as opposed to assistance with specific time-limited tasks. When Texas Medicaid introduces the new PCS program for beneficiaries under the age of 21, it must authorize all requested medically necessary Personal Care services that are required to meet all of the Beneficiary’s Personal Care needs over the span of time the needs arise, as the needs occur over the course of a 24-hour day. For example, a Beneficiary who requires assistance with positioning over a period of hours can obtain those services during those hours, as opposed to simply being authorized the number of minutes it takes to assist with specific tasks.

NURSING SERVICES

Texas Medicaid will authorize all medically necessary nursing services, either through Home Health Skilled Nursing services or Private Duty Nursing (PDN) services.

Q. What do Nursing services include?

A. In Texas, the Texas Nursing Practice Act (TNPA) describes the scope of nursing services that Texas nurses can provide. Texas Medicaid is supposed to authorize any medically necessary nursing services that meet the definition of nursing services in the TNPA. Nursing services include observation, assessment, intervention, evaluation, rehabilitation, care and counsel, or health teachings of a Beneficiary who has a disability or chronic health condition or who is experiencing a change in normal health processes. Nursing services also include the supervision of delegated nursing tasks.

Q. When are Nursing services medically necessary?

A. When they correct or ameliorate the Beneficiary's disability or physical or mental illness or condition.

Q. When do nursing services "correct or ameliorate the Beneficiary's disability or physical or mental illness or condition"?

A. When the nursing services improve, maintain, or slow the deterioration of the Beneficiary's health status. As described above, to "ameliorate" a condition or illness does not mean that the condition or illness has to "improve." A beneficiary can have a medical need for nursing services even when their condition is not going to improve.

Q. How does Texas Medicaid decide how many hours of nursing services to prior authorize?

A. Texas Medicaid must authorize all requested medically necessary Private Duty Nursing services that are required to meet all of the Beneficiary's Private Duty Nursing needs over the span of time the needs arise, as the needs occur over the course of a 24-hour day. As with PCS, in the past, Texas Medicaid authorized nursing services based on a strict guideline that estimated how many minutes it took to perform a limited list of nursing tasks. Texas Medicaid did not base authorization on when the Beneficiary needed nursing services and it did not take into consideration that many Beneficiaries need nursing services over a span of time, as opposed to assistance with specific, time-limited nursing tasks.

Q. Can Texas Medicaid have a limit or cap on the amount of nursing available to Beneficiaries under the age of 21?

A. NO. Texas Medicaid can not establish or apply a cap on the amount of medically necessary nursing available to Beneficiaries under the age of 21.

Q. Can Texas Medicaid deny a Beneficiary's request for nursing services based only on the Beneficiary's diagnosis?

A. NO. Texas Medicaid may not deny authorization of Nursing services or reduce the number of requested hours of services solely because of the Beneficiary's diagnosis, type of illness, or condition.

Q. Can Texas Medicaid deny or reduce the amount of nursing services on the basis that the Beneficiary's condition or health status is "stable."

A. NO. When a Beneficiary's medical needs have not decreased, Texas Medicaid can not deny or reduce the amount of nursing services on the basis that the Beneficiary's condition or health status is "stable" or has not changed.

Q. Can Texas Medicaid make a Beneficiary enter an institution to receive all medically necessary Nursing services?

A. NO. Texas Medicaid must provide all medically necessary nursing (and personal care) services to Beneficiaries in the most integrated setting appropriate to the needs of the Beneficiary, so that these Beneficiaries will not have to enter an institution to receive all medically necessary nursing (or personal care) services.

Q. How long does Texas Medicaid have to process my request for Nursing services?

A. Requests for nursing services will be completed within 3 business days of receipt of a complete request.

Q. Can Texas Medicaid require a parent or guardian to perform a portion of the Beneficiary's nursing services?

A. Texas Medicaid's current policy states that a parent or guardian must provide a portion of the Beneficiary's nursing services. The *Alberto N.* Plaintiffs believe this policy is unlawful, and are challenging this policy in Court.

If you or your service provider have additional questions about the Settlement Agreement, or believe that Texas Medicaid is not complying with the terms of the Agreement as described above, or your child is not receiving all of the Medicaid-funded services he or she medically needs, please call Disability Rights Texas at 1-800-315-3876. A copy of the Settlement Agreement and this summary is on our agency website, www.DisabilityRightsTx.org.