



Division of Medicaid & Children's Health Operations

SEP 25 2012

Bruce Goldberg, MD, Director
Oregon Health Authority
500 Summer Street Northeast, E-15
Salem, Oregon 97301

RE: Oregon State Plan Amendment (SPA) Transmittal Number 12-009

Dear Dr. Goldberg:

This letter is being sent as a companion to our approval of Oregon State Plan Amendment (SPA) 12-009. During our review of SPA 12-009, the Centers for Medicare and Medicaid Services (CMS) performed an analysis of the related coverage services. Based on that review, it was determined that pages 3-b.1, 3-c, and 4-c of Attachment 3.1-A, as related to the above services, are not in compliance with current regulations and CMS guidance.

In order to comply with current regulations and policy related to the above listed services, the State is responsible for completing/answering the following:

Home Health

1. Page 3-b.1, Medical Supplies in the Patient's Home: In accordance with 42 Code of Federal Regulations (CFR) 440.70(b)(3)(1), please clarify on the plan page the frequency of physician review of needed medical supplies, equipment and appliances.
2. Page 3-c, Physical, Occupational, and Speech Therapy in Patient's Home: The State plan indicates that services may be limited by number of days or visits as outlined in the Health Service Commissions (HSC) prioritized list of services. Please include these limitations on the plan page. Additionally, can these limits be exceeded based on medical necessity?

Private Duty Nursing

3. Page 3-c: The State has indicated that private duty nursing is only covered in a patient's residence. This does not comport with CMS' interpretation of the Detsel decision. In *Detsel v. Sullivan*, the Second Circuit Court of Appeals ruled that States may not preclude the provision of private duty nursing services during those hours of the day that the beneficiary's normal life activities take him/her outside of his/her home to attend school. Following the *Detsel* case, CMS, then the Health Care Financing Administration, issued nationwide guidance eliminating the at-home restriction on private duty nursing. Please revise the State plan language to comport with this guidance.

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4. Page 3-c: The State plan indicates that limitations are specified in the Oregon Administrative Rules and the Medically Fragile In-Home Supports Administrative Rules in conjunction with the HSC prioritized list of services. Please include these limitations on the plan page. Additionally, can these limits be exceeded based on medical necessity?

Therapies

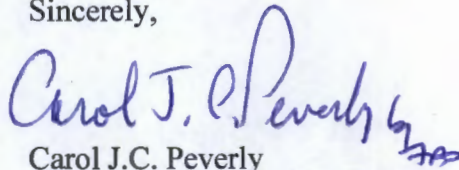
5. Page 4-c, Physical Therapy and Occupational Therapy: The State plan indicates that services may be limited by number of days or visits as outlined in the Oregon Administrative Rules. Please include these limitations on the plan page. Additionally, can these limits be exceeded based on medical necessity?

6. Page 4-c, Services for Individuals with Speech, Hearing and Language Disorders: The State plan indicates that limitations of services are described in the Division Speech-Language Pathology, Audiology and hearing Aid Services Guide. Please include these limitations on the plan page. Additionally, can these limits be exceeded based on medical necessity?

Please respond on or before the 90th day of the date of this letter with a corrective action plan describing how the State will resolve the issues identified above. Failure to respond timely will result in our initiation of the formal compliance process. During the 90 days, we are willing to provide technical assistance.

If you have any questions concerning this SPA or require further assistance, please contact me, or have your staff contact Bill Vehrs at (503) 399-5682 or bill.vehrs@cms.hhs.gov.

Sincerely,



Carol J.C. Peverly
Associate Regional Administrator
Division of Medicaid and Children's Health
Operations

cc:

Judy Mohr Peterson, Administrator, Office of Medical Assistance Programs
Jesse Anderson, State Plan Coordinator, Office of Medical Assistance Programs