How to Appeal a Denial of Home Health Services for Your Child:

A Guide for Families

I. Introduction

Shift nursing and home health aide (HHA) services are among the most important benefits provided by the Medicaid program for children with medical complexities. These "shift care" services are critical in enabling children with significant health needs to safely live in their own homes and attend school.

While these services are critical, they are subject to the prior authorization process. If your child's Medicaid managed care plan denies your request for nursing or HHA services, you have the right to appeal. This includes:

1. when the plan tries to reduce some of the nursing or HHA hours your child gets;
2. when the plan denies a request for more shift care hours;
3. when the plan completely denies a shift care request; or
4. when the plan changes the level of care your child is receiving. (For example, denying skilled nursing and approving a home health aide).

This guide explains how to appeal a pediatric shift care denial, and how to present and prove your case during the appeal process.

II. How to Appeal

An appeal is how you challenge the denial, reduction, or termination of shift care services.

Step one: Ask for a Grievance

A grievance is the first level of an appeal. It is an internal review of the denial by the managed care plan. It is also your chance to explain why the decision was wrong.

During the grievance, the denial is reviewed by three people, including a managed care plan doctor. You have the right to take part in the grievance review meeting, either in person, by video conference, or by phone. You also have the right to have your child's doctor(s) or others take part on your behalf. The plan normally must make a grievance decision within 30 days from when you asked for the grievance. You can ask that the grievance meeting be postponed for an additional 14 days, for a total of 44 days from when you requested it.

Can I continue getting services during the appeal process?

Yes. Ask for your grievance within 15 days of the date on the denial letter. Also ask for a fair hearing and external review within 15 days of the date on the grievance decision letter. Services you are already getting will continue during the appeal process.

Ask for a grievance by calling your child's managed care plan or by mailing or faxing the Grievance Request form that came with your denial letter.

You have **60 days** from the date on the denial letter to file a grievance, but only **15 days** if you want to continue receiving denied services during the grievance process.

Step two: Ask for a Fair Hearing and an External Review

If you do not agree with the grievance decision, you have the right to file two more appeals: a fair hearing and an external review. Both of these appeal types are discussed in the section below.

If a grievance decision reduces or ends your child's shift care services, you should request **both** a fair hearing and an external review within ten (15) days of the date on the grievance decision. Requesting both types of appeal within ten (15) days and at the same time will allow you to keep your child's existing shift care hours throughout the appeal process.

Can I get a faster decision?

Yes. If your child's health could be harmed by waiting the normal timeframe for an appeal decision, ask for a faster review. This is called an "expedited" grievance or fair hearing. Get a letter from your doctor that says you need a faster review. For an "expedited" appeal, the panel must give you a decision within 72 hours of your request.

DO NOT wait for the external review decision before requesting a fair hearing. If you wait and the external reviewer says your child's hours should be cut, you will lose those hours while waiting for the fair hearing.

Fair Hearing

A fair hearing is a meeting where the managed care plan has to explain its decision to an administrative law judge (ALJ). You have the right to take part in person or by phone. Your child's doctor or others can also take part. Either you or someone on your behalf must take part in the hearing or it will be dismissed. The judge should issue a decision within about 60 days of your request for hearing.

To ask for a fair hearing, complete and mail the form that came with your grievance decision. Include the grievance decision with your form. Use certified mail so you can prove you sent your fair hearing request. A fair hearing cannot be requested by telephone.

You have **15 days** from the date on the grievance decision to mail your fair hearing if you want your child's shift care hours to continue while waiting for the fair hearing decision. If you miss this deadline, or if you are asking for a fair hearing about a denial of new or more PAS hours, you have 120 days from the date on the grievance decision to mail your fair hearing request.

External Review

An external review is a review of the managed care plan's grievance decision by a doctor chosen by the PA Department of Insurance. The external reviewer must give you a decision within 60 days of your request.

Call your child's plan to ask for an external review. You have **15 days** from the date on the grievance decision to request an external review. For appeals involving a proposed reduction, your child's shift care hours will continue at the higher level as long as your grievance request was filed timely.

NOTE: You can and should ask for an external review and a fair hearing **at the same time**. If either appeal is decided in your favor, the managed care plan must approve the service.

III. Understanding Medical Necessity

Your goal during the appeal process is to prove the "medical necessity" of the shift care hours that have been denied. In general, pediatric shift care cases involve two parts:

1. Clinical Level of Care: Is the service requested clinically appropriate for the child?
2. Parental Availability: Is a parent or guardian able and available to provide the services during the hours in question?

Your appeal may involve one or both of these parts. Even if the dispute centers on parental availability, still frame your argument in terms of medically necessary.

Try to show that your child's need for skilled nursing or home health aide services meets any one of the following parts of the Medicaid medical necessity definition. You can use the exact language of the three-prong standard, or you can simplify the standard and use plain language. For example: "Skilled nursing is medically necessary under the first prong of the standard because my child needs to be monitored and given rescue medications to avoid prolonged seizures."

A service is **medically necessary** if it does one or more of the following:

1. It will, or is reasonably expected to, prevent the onset of an illness, condition, or disability;
2. It will, or is reasonably expected to, reduce or ameliorate the physical, mental or developmental effects of an illness, condition, injury, or disability; or
3. It will assist the recipient to achieve or maintain maximum functional capacity in performing daily activities, taking into account both the functional capacity of the recipient and those functional capacities that are appropriate for recipients of the same age.

55 Pa. Code §1011.21a.

IV. Proving Your Case

The remainder of this guide explains how to prove your case during your appeal. The process is similar for both Grievances and Fair Hearings.

Step 1: Plan Your Arguments

Start by picking out one or two main arguments to make during your appeal. Remember that your goal is to establish that the requested services (or hours at issue) are medically necessary. Be sure to respond to the reason for the denial listed in managed care plan's notice (or grievance decision).

Here are examples of common arguments you could make. The shift care services requested for my child are medically necessary because …

Shift Nursing

- My child requires monitoring and evaluation …
    - E.g., for seizures, severe allergies, or uncontrolled diabetes/glucose levels
    - And the administration of rescue medications or insulin, e.g., as needed
- My child requires regular or intermittent medication administration.
- My child requires gastrostomy-tube (G-Tube) feedings, medications, and/or monitoring.
- There have been no changes in my child's condition that warrant the reduction in nursing hours that have been in place for [x] years.
- Without these services, my child will not be able to safely ride the bus and/or attend school.

HHA Services

- My child requires hands-on assistance – or cueing – to complete age-appropriate activities of daily living (ADLs) like bathing, dressing, or toileting.
    - Be careful to not emphasize behaviors that interfere with these ADLs.
- Without these services, my child will not be able to safely attend school.
- There have been no changes in my child's condition that warrant the reduction in HHA hours that have been in place for [x] years.

Parental Availability (for Nursing and HHA Services)

- Parents (or caregivers) are unavailable to provide care during the hours requested because …
    - Of work and commute times (specify and document the work obligations);
    - They are caring for other children in the household (specify ages, care needs, extracurricular activities, et cet);
    - They perform essential household duties (specify tasks and time they take);
- Parents (or caregivers) are not "able and available" because they have their own medical conditions, treatments, or appointments;
    - Document the specific diagnoses and functional limitations that impact the parent's ability to provide skilled care or assistance with daily activities

Parental Availability

A managed care plan cannot deny a request for shift care services because a parent or caregiver is present in the home **unless** the PH-MCO has adequate documentation that substantiates the parent or caregiver is **actually able and available** to provide the child's care during the time hours are requested. The PH-MCO must take into consideration the live-in caregiver's work schedule, sleep schedule, and other responsibilities, including other responsibilities both inside and outside and the home.

In this context, "other responsibilities" includes but is not limited to the following:

i. Completing essential household duties such as shopping, housekeeping, laundry, yard work, errands, and medical appointments;
ii. Coordination of health care and services for the member;
iii. Attending religious service; and
iv. Care of other children in the home, including attending their extracurricular activities.

DHS/MCO Ops Memo #05/2023-004 (Available here) *(emphasis added)*

Parents as Paid Caregivers (for Home Health Aide Services)

- A parent or caregiver who is seeking to be a paid HHA should include a work verification letter from the agency employing them that states how many hours they are approved to work or intend to work once hired.
- During the time they are approved to work, the PH-MCO should consider parents "unavailable and unable" to provide care, per Ops Memo 05/2023-004.
- You should explain why you would like to be the paid caregiver.
    - For example, it has been difficult to maintain employment outside of the home due to the needs of your child.
- If there are any skilled needs, either intermittent or routine, that take place during the requested HHA hours, have the agency explain in the work verification letter, where applicable, that you can clock out to complete those needs.

Parents/ Legal Guardians as Paid Caregivers

At the end of the Public Health Emergency in May 2023, Pennsylvania's Medicaid program issued guidance clarifying that parents and guardians can continue be paid caregivers when providing skilled nursing or HHA services.

It also clarified that a parent or legally responsibility relative cannot be considered "available" – such that the managed care plan could deny services on that basis – during the hours they are scheduled to work through a home health agency:

> NOTE: If the parent or caregiver is employed as a nurse or home health aide and may be assigned to staff the member's case, the PH-MCO must consider the time that parent or caregiver is scheduled by his or her employing agency to provide nursing or home health services to be the parent or caregiver's work schedule, during which time the parent or caregiver is unavailable.

DHS/MCO Ops Memo #05/2023-004 (pg. 3).

Step 2: Gather Evidence and Choose Witnesses

Once you identify your argument(s), think about what evidence and witnesses you can use to support your argument that the shift care hours at issue are medically necessary.

Gathering Evidence

The letter of medical necessity from the doctor who prescribed your child's shift nursing or HHA services is a key document. Be sure that it is accurate and thorough. Ask your child's doctor to update the letter of medical necessity if it does not address the managed care plan's reason for denial.

PHLP's Guide to Writing a Letter of Medical Necessity offers tips for doctors and other clinicians.

In addition to the letter of medical necessity from the prescribing doctor, the following documents may also be helpful to submit with your appeal:

- Letters from other doctors/clinicians/specialists
- Letters from physical or occupational therapists
- Nursing notes that show the types and frequency of skilled care provided (for SN)
- Agency notes that show the types and frequency of ADL care provided (for HHA)
- Episode logs

    - Of events such as seizures, allergic reactions, or other episodes requiring monitoring and evaluation and/or emergency treatment
- Letters from your child's school
    - Stating, for example, the school cannot provide 1:1 nursing or HHA services
- Letters from the parent or caregiver's doctor
    - Attesting to how the parent/CG's health conditions limit their ability to provide skilled care or help the child complete ADLs
- Updated verification of parent's work or school verification
- Weekly schedule, or other documentation of parental responsibilities:
    - E.g., essential household duties like shopping, housekeeping, laundry, errands; attending religious services; caring for other children.

If you are participating in the appeal hearing by phone or video conference, make sure all your documents get to the grievance panel or the hearing officer (called an Administrative Law Judge) before the scheduled hearing takes place. Ask for a fax number, e-mail address, or address where you can send the information ahead of time. Otherwise, bring it with you to the in-person appeal hearing.

Choosing Your Witnesses

You can have witnesses take part in your appeal hearing. Common witnesses include:

- You, the parent or caregiver;
- Your child's doctor or in-home nurse;
- The clinical care manager from your agency; and/or
- Others who are familiar with your child's health and care needs.

It is fine for you to be your only "witness" during your appeal. Many people find it helpful to have additional witnesses to help present their case. You should choose witnesses who are familiar with your child's care needs and can help explain why the denied shift care hours are medically necessary.

Discuss the appeal with your witnesses ahead of time to make sure they are ready to participate. It may be helpful to give them a list of questions or topics you want them to talk about at the hearing. Make sure you give them the date and time of the hearing and confirm how they will be participating—Will they be with you? Will they be participating from a separate phone? If your witnesses will be participating from a separate phone, don't forget to provide their contact information to your plan's grievance department or to the Administrative Law Judge (ALJ) when you send any documents you plan to submit for the appeal.

Presenting Your Case

During your grievance or fair hearing, the managed care plan will present first. They will explain why they think the decision to deny your child's shift care hours was correct. After that, you will be allowed to present your case.

Remember, your goal is to explain to the decision maker — the grievance panel or the ALJ — why the shift nursing or HHA hours you are seeking are medically necessary. Aim to keep your presentation to no longer than 30-45 minutes.

Start by introducing yourself. If you sent documents in advance, confirm that they were received. If they do not have the documents you sent in, ask if you can email or fax the documents right after the hearing.

Next, give a short statement explaining the issue for the grievance panel or the ALJ. Give a summary of your child's health problems and explain what kind of care or assistance they need on a daily basis. Make your main argument(s) for why the shift care hours are medically necessary. Then, present your witness or witnesses to talk about why the SN or HHA hours you are asking for are medically necessary.

When you present your own "testimony", talk about your child's conditions and needs. If the managed care plan argues you are available to provide the care, explain how this is inaccurate. Explain, in as much detail as possible, how the shift care hours the plan is offering are not enough. Give examples of why your child needs the denied hours and go through the arguments you prepared (see Step 1). Highlight the most helpful parts of any documents you have provided, such as your child doctor's letter or logs showing recent seizure activity.

Once you present all your evidence – both testimony and documents – the managed care plan or the ALJ may have follow-up questions for you and your witnesses. Answer their questions honestly and clearly, without going off-topic.

After any questions, you can choose to give a short closing statement. A closing statement is where you wrap up your argument and reiterate anything you want the decision-maker to know before the hearing ends.