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July 22, 2019

Kim Kellum
Office of the General Counsel
Agency for Healthcare Administration
2727 Mahan Drive
Tallahassee, Florida 32308

Via email

RE: Florida Medicaid Enrollee [REDACTED] –Denial of Private Duty Nursing Services

Dear Ms. Kellum:

I represent [REDACTED]; mother of [REDACTED] (DOB: [REDACTED]; Medicaid #: [REDACTED]). [REDACTED] is diagnosed with Juvenile Myelomonocytic Leukemia which causes seizures. She is also an asthmatic and has a gastronomy-jejunostomy tube. Due to [REDACTED] significant disabilities, she requires 24 hours of private duty nursing care, 7 days per week. [REDACTED] is currently authorized for 16 hours of private duty nursing (“PDN”) per day and 8 hours of Prescribed Pediatric Extended Care (“PPEC”). [REDACTED] has been a Sunshine Health Plan (“Sunshine Health”) enrollee for four years, and - until June 10, 2019 - her PDN provider was Sonas Home Health Services (“Sonas”). [REDACTED] is currently admitted inpatient to Wolfson Children’s Hospital; she cannot be discharged safely to her home because Sunshine Health is unable to locate PDN services sufficient to meet [REDACTED] home healthcare needs. Based on the information set forth below, I ask that AHCA take action to immediately resolve, in favor of [REDACTED], Sunshine’s inability

to secure medically necessary PDN services for [REDACTED] so she can be discharged from the hospital and return home to her mother and five siblings.

Ms. [REDACTED] is a single mother to 6 children. Her children range in age from 14 years old to 5 months old. Ms. [REDACTED] also works, at least, 30 hours per week at the Duval County Department of Health coaching new mothers on appropriate techniques for breastfeeding. While she has some family available to help when they can, no one in the family is trained on [REDACTED] extraordinary medical needs. Only [REDACTED] [REDACTED] has the expertise required to care for [REDACTED] when [REDACTED] is home. Thus, [REDACTED] cannot go to work or meet her multitude of other responsibilities if Tia is without PDN. Therefore, [REDACTED] cannot be discharged from the hospital until PDN is in place.

In February 2019, [REDACTED] was admitted to Wolfson Children's Hospital ("Wolfson"). At the time she was admitted, [REDACTED] received PDN services from PSA Healthcare, Inc. ("PSA"). In March 2019, [REDACTED] contacted PSA to let them know that [REDACTED] would soon be ready for discharge from Wolfson. During [REDACTED] [REDACTED]'s call with PSA, PSA informed her that it would no longer provide PDN services to [REDACTED]. PSA did not provide [REDACTED] a reason for its discharge of Tia or any written notice of its decision. PSA also did not offer to help transition [REDACTED] to a new home healthcare provider. Once notified of PSA's decision, Sunshine Health negotiated a new contract with Sonas so that [REDACTED] could be discharged safely from the hospital and reside at home with PDN services in place. In May 2019, [REDACTED] was discharged from Wolfson to Sonas for PDN services even though she was medically ready for discharge in early April.

On June 7, 2019, [REDACTED] was again admitted to Wolfson due to a respiratory infection she developed from her PPEC. On June 10, 2019, Sonas informed [REDACTED] [REDACTED] that it could no longer provide PDN services to [REDACTED] because Sunshine had failed to reimburse Sonas for any of the care

it provided between May 2019 and [REDACTED]'s hospital admission on June 7th. Sonas told [REDACTED] [REDACTED] it would like to continue to provide PDN services to [REDACTED], but it cannot if Sunshine Health does not satisfy its debt with Sonas.

On June 19, 2019, Wolfson informed [REDACTED] [REDACTED] that [REDACTED] was medically ready for discharge. Wolfson has also worked closely with [REDACTED] Sunshine Health care coordination team to try and secure PDN so [REDACTED] can be safely discharged home. Wolfson's efforts with Sunshine Health have been unproductive. On Friday, July 22nd, during [REDACTED] discussions with Sunshine Health about the problem, Sunshine Health told [REDACTED] she should switch managed care plans because they cannot provide the PDN services that [REDACTED] needs. Sunshine Health suggested two other health insurance plans. As of the date of this letter, Sunshine Health has not secured PDN services for [REDACTED] and [REDACTED] remains in the hospital.

[REDACTED] is entitled to the PDN services that Sunshine Health, through its function as a managed medical assistance plan for Florida's Medicaid program, has determined is medically necessary under Medicaid's Early and Periodic Screening, Diagnostic and Treatment requirements, 42 U.S.C. §§ 1396a(a)(43), 1396d(a)(5), 1396d(r) ("EPSDT"). Sunshine Health's inability to provide PDN services to [REDACTED] violates her right to EPSDT services. Moreover, Sunshine is required to ensure that it has an adequate network of providers to provide the services enrollees, like [REDACTED], need. 42 C.F.R. §§ 438.68, 438.206(a), (b); *see also*, AHCA's Statewide Medicaid Managed Care Model Contract, Attachment II, Section VIII(A)(1), page 86. Where Sunshine does not have an adequate network of providers, it must offer the enrollee an out of network option. AHCA Model Contract, Attach. II, Section VIII(A)(1)(d)(1), pg. 86; *see also*, 42 C.F.R. §438.206(b)(4). [REDACTED] being forced to receive care in an institutional setting as

opposed to being allowed to live at home with PDN services is a violation of Title II of the ADA as well. *See Olmstead v. L.C. ex rel Zimring*, 527 U.S. 581 (1999).

It is clear that PSA and Sonas are unsatisfied with Sunshine Health's reimbursement rates. It may also be that Sunshine Health cannot fund an adequate network of home health providers in Jacksonville for its enrollees. These are problems that need to be addressed by Sunshine, its contracted home health providers, and AHCA. Sunshine Health, cannot however, tell a family that it is unable to locate a medically necessary service provider for a child enrollee with significant disabilities and, instead, try to wash their hands of the problem by telling the family to find a managed care plan who can.

Thank you for your consideration of the above matter. I ask that you please respond to this letter in writing by July 26, 2019. You can mail the correspondence to my attention at: 126 West Adams St., Jacksonville, Florida, 32202 or email to: katy.debriere@jaxlegalaid.org.

Sincerely,



Katy DeBriere
Managing Attorney
Northeast Florida Medical Legal Partnership
Jacksonville Area Legal Aid, Inc.

CC: AHCA, Florida Medicaid Complaint Hub, *via online portal*
Craig Smith, Counsel, Sunshine Health Plan, *via email*