BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Claimant,

and

South Central Los Angeles Regional Center

DDS No. CS0021568

OAH No. 2024100581

DECISION

Administrative Law Judge Chantal M. Sampogna, Office of Administrative Hearings (OAH), State of California, heard this matter on December 4, 2024, in Los Angeles, California.

Claimant's mother (Mother) appeared on behalf of Claimant who was present. (Titles are used to protect the privacy of Claimant and her family.)

Tami Summerville, Appeals Manager for the South Central Los Angeles Regional Center (Service Agency), appeared on behalf of Service Agency.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on December 4, 2024.

ISSUE

Whether Claimant requires In-Home Respite Care (respite services) to be provided by a Licensed Vocational Nurse (LVN).

EVIDENCE RELIED UPON

Documents: Service Agency's Exhibits 1 through 6; Claimant's Exhibits A through D.

Testimony: Gladys Estrada, Service Coordinator; Nasreen Asaria, Nurse Consultant; Gayla Fair, Lead Nurse Consultant; Mother; and Claimant.

SUMMARY

Claimant is a 17-year-old girl eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) (Undesignated statutory references are to the Welfare and Institutions Code). Claimant requested respite services. Service Agency conducted a nursing assessment and concluded Claimant's respite services must be provided by an LVN based on Claimant's Type 1 Diabetes (diabetes) and in consideration of Claimant's other medical diagnoses.

Claimant established her respite care does not need to be provided by an LVN, but can safely be done by a layperson. Claimant does not require the provision of medical services generally, or incidental medical services, during a period of respite services. Claimant successfully manages her diabetes with an automated insulin device

and continuous glucose monitor (collectively, automated diabetes supplies), thereby eliminating the need for the provision of incidental medical services during a period of respite. As well, to the extent the administration of insulin or Glucagon were to be necessary during a period of respite services, the Lanterman Act provides such services may be provided by unlicensed professionals. Accordingly, Claimant's appeal is granted.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 17-year-old girl who lives with Mother and her adult sister. Mother was initially Claimant's legal guardian through appointment by the juvenile court related to a juvenile law dependency proceeding. Mother has since adopted Claimant.

2. Claimant is eligible for Lanterman Act services under the category of Intellectual Disability (ID) and Autism Spectrum Disorder (ASD).

3. Claimant has the following additional diagnoses: Mild Persistent Asthma, Uncomplicated; Type I Diabetes with Other Specified Complication; Specified Congenital Malformations of Eye (not referenced by Service Agency as a current medical challenge); Long QT Syndrome; and epilepsy. (See Exh. 3, pp. A42, A47; Exh. 5, p. A80.)

4. At Claimant's January 3, 2024, IPP meeting, Claimant requested respite services by a non-LVN.

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5. On July 5, 2024, Registered Nurse Nasreen Asaria, Service Agency Nursing Consultant, completed a nursing assessment of Claimant. RN Asaria concluded Claimant met the criteria for receiving LVN respite hours. (Exh. 4, p. A72.)

6. On August 28, 2024, Service Agency issued a Notice of Action (NOA) to Claimant denying the request for non-LVN respite because Claimant "requires a nursing level of care based on the nursing assessment." (Exh. 1, p. A18.) Service Agency agreed to provide funding for respite services to be provided by an LVN.

7. On October 9, 2024, Claimant submitted her Appeal Request Form.

Claimant's Management of Her Medical Conditions

SCHOOL AND HOME LIFE

8. Claimant is in the 11th grade and attends Bridgeport School. Claimant goes to school Monday to Friday from 8:30 a.m. to 2:30 p.m. She returns home at approximately 5:00 p.m. Claimant is transported to and from school by Mother, her sister, or a school cab or Uber. When Claimant is transported by cab or Uber, she is solely responsible for her medical conditions. Claimant is preparing to attend college and to navigate college independently, without the assistance of an LVN.

9. Claimant attends both general and special educational classes and receives speech services to help with her speech impediment. (Exh. 3, p. A54.) In the evenings, before bed, Claimant lays out her medications for the next morning. In the morning, Claimant takes her medications independently and then goes to school.

10. As of 2022, Claimant needed supervision in the community but was primarily independent at home. (Exh. 5, p. A74.) Over the past two years Claimant has

matured, learned more about her medical conditions, including diabetes, and has achieved independence in the medical aspects of her conditions.

11. When at school, Claimant does not receive any level of active involvement with her management of her medical diagnoses. Rather, when at school, Claimant may, if she needs to, interact with the school nurse regarding her blood sugar and planned carbohydrate intake. When the school nurse is absent, Claimant handles her diabetes independently or may, as needed, communicate with Mother about her blood sugar levels and insulin bolus for her lunch.

12. Claimant's multiple diagnoses were identified in the NOA and in the record. At hearing, although Service Agency's primary focus as to why Claimant requires an LVN respite provider was based on her diabetes and epilepsy diagnoses and prescriptions, Service Agency also referenced the totality of Claimant's medical conditions. Accordingly, Claimant's medical conditions are addressed herein.

LONG QT SYNDROME

13. Lauren Sell, Master of Service of Nursing (MSN), Electrophysiology Nurse Practitioner (ENP), of Children's Hospital Orange County (CHOC), authored a November 22, 2024, letter on behalf of Claimant. (Exh. B.) ENP Sell explained Claimant is followed in CHOC's Cardiology Division for a history of Long QT Syndrome (a heart rhythm disorder). Claimant had a Medtronic loop recorder implanted in 2020 for long term heart rhythm monitoring and was ultimately removed on March 27, 2024. Claimant's Cardiology team decided to not implant a new loop recorder and determined Claimant no longer requires nursing assistance for her Long QT Syndrome.

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ASTHMA

14. Sunny Yu, Physician's Assistant-Certified (PA-C), of the Memorial Care Miller Children's and Women's Hospital (Memorial Care) Pediatric Pulmonary Clinic, authored an October 30, 2024, letter on behalf of Claimant. (Exh. D.) PA-C Yu explained Claimant has moderate persistent asthma treated by taking two twice a day puffs of an Alvesco inhaler, which she can do at home. Service Agency did not claim, and no evidence was presented that Claimant's asthma required an LVN respite provider.

EPILEPSY

15. Claimant developed epilepsy in 2019. (Exh. 5, p. A91.) Claimant has not had any seizures since May 2022. (Exh. 4, p. A71.) Claimant's Magnetic Resonance Imagings (MRIs) and Electroencephalograms (EEGs) have been stable and Claimant's neurologist continues to decrease Claimant's Depakote prescription, as recently as September 2024. (Exh. 5, p. A80.) Claimant is prescribed Nayzilam, an emergency spray to be administered as needed for seizure clusters or for a prolonged seizure of more than five minutes. (Exh. 5, pp. 83-84.) Claimant has never needed to use or be administered Nayzilam.

16. Nicole Cobo, M.D., of the Neurological Clinic at Memorial Care Miller Children's and Women's Hospital (Memorial Care), authored an October 29, 2014 letter on behalf of Claimant. (Exh. C.) Dr. Cobo explained Claimant is seen by the Memorial Care Neurological Clinic based on her diagnosis of epilepsy. Based on Claimant's lack of seizures Claimant will be weaned off Depakote if her next EEG continues to have normal results.

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DIABETES

17. Claimant was diagnosed with diabetes eight years ago, when she was nine-years old. During the first few years of her diagnosis, she had poor health awareness and did not recognize the signs of hypoglycemia (low blood sugar) or hyperglycemia (high blood sugar) and she could not be left alone. (Exh. 5, p. A80.)

18. For some period before July 2023, Claimant received her insulin delivery through a TSlim X2 insulin pump. This is a non-disposable insulin pump which Claimant and Mother would load with cartridges they would fill with insulin approximately every two days. If the TSlim X2 pump fails and cannot be restarted through technical support, a replacement pump would be sent to Claimant. In the meantime, Claimant would revert to insulin shots as her mode of insulin delivery. (Exh. 4, p. A69; Exh. 5, p. A72.)

19. In July 2023, Claimant began using the OmniPod 5 (Omnipod) automated insulin delivery (AID) system which integrates with the Dexcom G6 continuous glucose monitoring (CGM) sensor. The OmniPod is a disposable AID which delivers insulin through an app (AID app) installed on Claimant's phone. Claimant fills the Omnipod with insulin and then attaches the Omnipod to her abdomen; the Omnipod then delivers the required insulin as programmed by the AID settings prescribed by Claimant's endocrinologist. The Omnipod and AID app have a feature which alerts Claimant ahead of time if Claimant's blood sugar is rapidly trending high or low, which allows for treatment before an emergency.

20. The AID app is programmed according to Claimant's endocrinologist's orders, or pump settings. For example, the AID app is programmed to deliver a set basal (or hourly) rate of insulin to Claimant throughout the day. When Claimant is

going to consume foods with carbohydrates, Claimant enters the grams of carbohydrates in the AID app and, pursuant to her AID pump settings, the Omnipod delivers the required amount of insulin pursuant to Claimant's insulin to carbohydrate ratio as prescribed by Claimant's endocrinologist.

21. Claimant's AID app is also programmed with an insulin sensitivity factor which provides insulin adjustments on the chance that Claimant's blood sugar is elevated. At the same time, Claimant's CGM monitors and reports Claimant's blood sugar level every five minutes to the AID app and the Omnipod responds to the blood sugar readings. Together, the Omnipod and CGM create a closed loop system. For example, depending on Claimant's blood sugar reading the AID app may alert her that her blood sugar is trending low, to which Claimant could treat herself by ingesting a glucose tablet, or it may, based on the doctor's pump settings, deliver insulin if Claimant's blood sugar is trending high.

22. When Claimant consumes food which contains carbohydrates, such as an apple or yogurt for a snack, or bread for a sandwich, she looks up the food in the app Calorie King, determines the number of grams of carbohydrates, types the number into the AID app and the Omnipod delivers the required amount of insulin. If, for some reason, the attached Omnipod did not work, which has not happened for Claimant, she would take it off and attach another one. Based on the disposable nature of the Omnipod she would not need to revert back to insulin injections if an attached Omnipod malfunctioned.

23. Since January 2023, Claimant's hemoglobin A1C values (a blood test which evaluates an individual's glucose control over a three-month period of time) have been 6.4 and 7.2, within the target range. (Exh. 5, p. A91.) Claimant has not been hospitalized due to her diabetes; Claiamnt has not experienced ketoacidosis (when the

body begins to break down fat as fuel due to a lack of insulin) and has not experienced severe low blood sugars resulting in seizures, or severe high blood sugars resulting in coma. (Exh. 5, p. 103.) Claimant is able to recognize symptoms of low or high blood sugar and can act accordingly. If she feels or is alerted by her Omnipod of a low blood sugar, she will drink juice or eat glucose tabs; if she feels, or is alerted to a high blood sugar, she may use her insulin sensitivity factor function on her Omnipod to deliver insulin to offset the rise in her blood sugar level. Claimant is prescribed Glucagon, an injectable hormone which activates the body's production of sugar but has not had to use it. Since her use of the Omnipod Claimant has not required to inject herself, or have others inject, insulin due to pump failure.

24. Rebecca Hicks, M.D., of the Pediatric Endocrine and Diabetes Center at Memorial Care is Claimant's pediatric endocrinologist for the treatment of Claimant's diabetes and authored a November 21, 2024 letter on behalf of Claimant. Dr. Hicks explained Claimant's diabetes has been medically stable under Mother's care. Mother has "demonstrated consistent dedication to [Claimant]'s overall health and well-being, including the complexities of managing patient's diabetes" and Mother "has an excellent sense of a safe level of transition to developmentally-appropriate independence." (Exh. A.)

25. Dr. Hicks also explained Claimant communicates episodes of high and low blood sugars, and when she needs assistance. Dr. Hicks confirmed Claimant is on the OmniPod 5 AID system which integrates with the Dexcom G6 CGM sensor. Dr. Hick's recommended Claimant "have a trained backup adult caregiver for respite, but that the backup caregiver does not need to have a nursing license to support [Claimant]." (*Id.*)

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MOTHER AND CLAIMANT'S TESTIMONY

26. Claimant credibly testified at hearing. She described in detail her efforts over the past years to become independent at managing her medical diagnoses, including her diabetes, her ability to utilize the Calorie King and AID apps and the Omnipod to manage her diabetes, and her compliance with all medication requirements. Claimant also described her general independence, such as when spending time with friends or being transported from school. Finally, Claimant asserted that she will soon be attending college and managing her diabetes and other medical conditions primarily on her own and she is eager to begin this next phase of her life. Mother reiterated Claimant's testimony, espousing Claimant's earned independence in self-care of her medical diagnoses.

Claimant's IPP

27. The IPP notes Claimant "experiences the two primary deficits" as "managing her Diabetes and her Asthma," and adds that Claimant does not have a seizure disorder. (Exh. 3, p. A43.) Claimant's IPP does not identify or discuss Claimant's epilepsy. As well, Claimant's IPP does not identify any medically related services or supports required by Claimant's other medical conditions.

28. The absence from the IPP of any concern regarding Claimant's epilepsy does not support Service Agency's assertion at hearing that Claimant's epilepsy requires, or is a contributing factor regarding, Service Agency's determination that Claimant requires LVN respite care. The IPP also contains incorrect information, such as Claimant needing assistance dressing, which she does not, and Claimant using an insulin pen to deliver insulin or a TSlim X2 to deliver insulin, both of which she no longer uses. (Exh. 3.) The IPP is unreliable based on its lack of accuracy.

29. Desired Outcome 2 (diabetes care outcome) of Claimant's IPP provides that Claimant will "receive ongoing evaluations and treatment, including medications for her [diabetes] so that she can maintain stable health." There is no information in Claimant's diabetes care outcome which identifies Claimant has experienced low or high blood sugars to the extent she has required treatment or medical treatment. (Exh. 3, p. A48.) Similarly, Outcome 3, addressing Claimant's asthma, does not identify any concern regarding Claimant's asthma other than that Claimant comply with general care for her asthma. (*Id*. at p. A49.)

30. Desired Outcome 6 provides Claimant "will receive supervision when she is taking her medication in order to ensure that the dosage and frequency is accurate." (Exh. 3, p. A52.) Outcome 6 fails to acknowledge Claimant's independence in achieving this outcome, thereby failing to accurately depict Claimant's service needs related to her medical conditions, or lack thereof.

Service Agency's Nursing Assessment

31. On July 5, 2024, six months after Claimant requested non-LVN respite, Registered Nurse Nasreen Asaria, Service Agency Nursing Consultant, completed a nursing assessment of Claimant. RN Asaria authored a July 6, 2024 Nursing Assessment of Claimant which concluded Claimant requires LVN respite based on her diabetes, and her secondary risk of low or high blood sugars, and her "complex diagnoses." (Exh. 4, pp. A71 & A72.) RN Asaria further concluded Claimant "needs monitoring, and . . . assistance and supervision in counting her carb intake as recommended to take required units of insulin" and that Claimant "does not recognize signs and symptoms of [low blood sugar] and cannot be left alone." (*Id*. at p. A72.) Based on the foregoing, RN Asaria recommended Claimant receive LVN respite.

32. Contrary to RN Asaria's nursing assessment, it was not established Claimant requires constant assistance and supervision; nor was it established Claimant requires help counting her carbohydrate intake or that she requires an LVN level of respite to take the required amount of insulin. RN Asaria conceded she did not ask Claimant, Mother, or any of Claimant's treating physicians or treatment providers, the most basic questions such as can Claimant count carbohydrates, can she detect or treat low or high blood sugars, or can she utilize the AID app to administer insulin. Rather, RN Asaria incorrectly assumed Claimant could not do these things and concluded an LVN was required for respite based on Claimant's diagnosis and the chance that an emergency might occur.

33. RN Asaria also testified about the Service Agency's Purchase of Service standards for nursing services (POS-Nursing Standards). The POS-Nursing Standards provide that an individual with "fragile diabetes" requires LVN respite care. (Exh. 6, p. A127.) Initially, RN Asaria testified Claimant has "fragile" diabetes, but then admitted she knows, based on her nursing training, there is no such diagnosis as "fragile" diabetes, that Claimant's medical record does not diagnose Claimant with "fragile" diabetes, and concluded she did not find Claimant's diabetes was "fragile."

34. RN Asaria further testified the need for LVN respite was based on a concern that if Claimant's insulin pump failed Claimant would need to return to insulin injections, and that if Claimant's blood sugar went low Claimant could experience brain injury and if it went high Claimant could experience a coma. RN Asaria admitted she did not communicate with any of Claimant's doctors or treatment providers when determining this risk factor was applicable to Claimant; RN Asaria conceded such extreme outcomes of seizure or coma are not immediate and would be the result of not treating earlier signs of low or high blood sugar.

35. After receiving RN Asaria's Nursing Assessment, Claimant's Service Coordinator (SC), Gladys Estrada, communicated with Service Agency's management, including its Director, and asked if there were any exceptions available to Service Agency's asserted LVN respite requirement for Claimant. Service Agency's management informed SC Estrada that no exceptions could be applied to Claimant.

36. Gayla Fair, Service Agency Lead RN Consultant, also testified at hearing. RN Fair had reviewed RN Asaria's Nursing Assessment and relied on it for her testimony at hearing. RN Fair did not meet with Claimant or Mother or any of Claimant's medical providers.

37. RN Fair recognized if Claimant's blood sugar is above desired levels, nothing must be done immediately. There would be time, upon any high blood sugar reading, for Mother to be called and return to assist with high blood sugar. There is no risk of immediate or even pending coma if Claimant happens to have a high blood sugar. Nonetheless, RN Fair supported RN Asaria's recommendation for LVN respite asserting that whether Claimant's blood sugar might run low or high is unknown. RN Fair's testimony is unpersuasive. Her assessment is contrary to the Omnipod's and its AID app's ability to alert Claimant to rapidly fluctuating blood sugar levels, should they occur, and was, therefore, not based on an accurate assessment of Claimant's medical conditions or her ability to manage them without LVN respite.

38. RN Fair admitted there is no Service Agency rule or policy which states if a consumer has diabetes any respite services must be provided by an LVN. RN Fair could not identify what if any care or supervision Claimant might require while receiving respite services constituted skilled nursing services.

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LEGAL CONCLUSIONS

Jurisdiction

1. The Lanterman Act governs this case. An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) (Factual Findings 1-7.)

Burden and Standard of Proof

2. The party asserting a condition which would make the individual eligible for a benefit or service has the burden of proof to establish he or she has the condition. (*Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 160-161.) In this case, Claimant bears the burden of proving by a preponderance of the evidence Claimant's respite services do not need to be provided by an LVN. (Evid. Code, § 115.) A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Claimant's Rights Under the Lanterman Act

3. Claimant, as an individual with developmental disabilities, has the right to dignity, privacy, and humane care; a right to treatment and habilitation services and supports in the least restrictive environment, services and supports should foster the developmental potential of the person and should be directed toward the achievement of the most independent, productive, and normal lives possible to social interaction and participation in community activities; to be free from harm; and a right to make choices in her own life. (§ 4502, subd. (b)(1), (2), (6), & (10).)

4. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a), 4648, subd. (a)(1) & (a)(2).) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§ 4646.5, subd. (a)(2).)

Service Agency's Position

5. Service Agency asserts Claimant must have an LVN respite worker because Claimant's diabetes management and epilepsy require the respite worker to perform incidental medical services or skilled nursing services which must be performed by an LVN. Service Agency is accurate Claimant's care, if any, required during periods of respite do not qualify as incidental medical services as defined by the Lanterman Act. However, contrary to Service Agency's position, any care Claimant may require during periods of respite do not rise even to the level of incidental medical service, or other level of medical service or skilled nursing service, but rather may be performed by a layperson. Further, provisions of the Lanterman Act specifically allow for diabetes care, such as the administration of insulin or glucagon, to be provided by a non-LVN if the individual is properly trained.

INCIDENTAL MEDICAL SERVICE PERFORMED BY IN-HOME RESPITE WORKERS

6. Service Agency cites section 4686 in support of its position that if Claimant were to be provided respite services, the respite services would need to be provided by an LVN. Section 4686 occurs within Article Four, Chapter 6, of the Lanterman Act, "Services and Support for Persons Living in the Community."

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7. Section 4686, subdivision (a), limits the types of incidental medical services a non-LVN may provide to a consumer. A respite worker who is not an LVN, but who has successfully completed training as required by section 4686, may perform:

> (1) Colostomy and ileostomy: changing bags and cleaning stoma.
>
> (2) Urinary catheter: emptying and changing bags and care of catheter site.
>
> (3) Gastrostomy: feeding, hydration, cleaning stoma, and adding medication per physician's or nurse practitioner's orders for the routine medication of patients with stable conditions.

(*Id.*)

8. The remaining portions of section 4686 are inapplicable to Claimant. (See section 4686, subds. (b) through (k).)

SERVICE AGENCY'S PURCHASE OF SERVICE FUNDING STANDARDS – NURSING SERVICES

9. Service Agency references its POS-Nursing Standards to further support its position that if Claimant were to be provided a respite worker, the respite worker would need to be an LVN. The POS-Nursing Standards provide the following:

> I. Definition
>
> Nursing respite services are provided to those consumers who require a nursing level of respite due to their medical

conditions. SCLARC will utilize nursing personnel through a nursing or home health agency for this service. A Registered Nurse (RN), Licensed Vocational Nurse (LVN) or Certified Home Health Aide (CHHA) will be used depending on the requirements of the [Claimant]'s medical condition and state licensing regulations as determined by SCLARC Nurse Specialists.

II. Criteria

Consumer conditions which require at least LVN level of care for respite services include, but are not limited to:

Gastrostomy

Tracheostomy care

Nasogastric feeding

Uncontrolled seizures, leading to respiratory or cardiac complications

Continuous oxygen

Total parental nutrition (TPN)

Apnea monitor

Apneas episodes

Fragile diabetes

Broviac catheter

Ventilator dependent Invasive procedures required during respite hours (e.g. injections, suctioning, IV medications, and dialysis)

Prescribed medication required during respite hours

Medically Fragile Complex Medical Regimens

10. RN Asaria admitted during her testimony the term or condition "fragile diabetes" is not a medical term, nor does Claimant have "fragile" diabetes. Neither Dr. Hicks nor any other doctor or treating medical provider described Claimant's diabetes as "fragile." Claimant's diabetes is, in fact, stable based on Dr. Hick's assessment, and as evidenced by Claimant's A1C levels and lack of need for any type of emergency medical supports, Claimant has not experienced any hospitalizations due to her diabetes; Claimant has not had uncontrolled seizures; Claimant has not had seizures due to low blood sugars and has not had ketoacidosis due to high blood sugars, and any fluctuations in Claimant's blood sugar level are managed with the consumption of glucose or the administration of insulin through the Omnipod.

11. Claimant's other medical conditions are not identified or including in the Service Agency-POS Nursing Standards and provide no basis for requiring Claimant's respite worker to be an LVN.

LICENSURE OF HOME HEALTH AGENCIES

12. Service Agency cites Health and Safety Code sections 1725 and 1726 in further support of its position that if Claimant were to be provided respite services, the respite services would need to be provided by an LVN. Specifically, Service Agency

asserts that Health and Safety Code sections 1725 and 1726 require a licensed home health agency to provide skilled nursing services.

13. Health and Safety Code section 1725, subdivision (b), requires "[A]ll organizations that provide skilled nursing services to patients in the home shall obtain a home health agency license issued by the department." Health and Safety Code section 1726, subdivision (a), provides:

> No private or public organization, including, but not limited to, any . . . governmental agency within the state, shall provide, or arrange for the provision of, skilled nursing services in the home in this state without first obtaining a home health agency license.

14. Service Agency failed to establish these provisions of the Health and Safety Code are applicable to Claimant's request for non-LVN respite. No care or services Claimant may need during respite rises to the level of skilled nursing services was identified by Service Agency. Both RNs Asaria and Fair conceded there was no such specified definition or rule which identifies diabetes care or management as skilled nursing services. Rather, were Claimant's blood sugar to drop low she would consume glucose by eating, a regular daily life activity. Were Claimant's blood sugar to rise above the desired range, her Omnipod would adjust insulin dosaging or Claimant could, if she preferred, wait to talk to Mother to determine how muchinsulin to administer. The evidence did not establish Claimant would require the administration of Glucagon, or any the emergency medication generally or during respite hours.

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The Lanterman Act's Provision for a Trained Layperson to Administer Glucagon

15. Even in the unlikely case Claimant required the administration of glucagon or insulin during respite hours, the Lanterman Act specifically provides that unlicensed individuals who are appropriately trained may administer glucagon to consumers. Article 3.5 of the Lanterman Act, which applies to "Adult Residential Facilities for Persons with Special Health Care Needs and Group Homes for Children with Special Health Care Needs" provides that unlicensed individuals if appropriately trained may administer glucagon and insulin to individuals with diabetes.

16. Section 4684.68, subdivision (b)(6), provides:

> All medications shall be administered only by those persons specifically authorized to do so by their respective scope of practice, with the exception of emergency medical assistance and injections for severe diabetic hypoglycemia and anaphylactic shock as described in subdivision (a) of Section 1507.25 of the Health and Safety Code.

17. Health and Safety Code section 1507.25 provides the following:

> (a)(1) Notwithstanding any other law, a person . . . who is not a licensed health care professional, but who is trained to administer injections by a licensed health care professional practicing within the professional's scope of practice, may administer emergency medical assistance and injections for severe diabetic hypoglycemia and anaphylactic shock to a foster child in placement.

(2) The following individuals shall be authorized to administer emergency medical assistance and injections in accordance with this subdivision:

(A) A relative caregiver.

(B) A nonrelative extended family member.

(C) A foster family home parent. [¶] . . . [¶]

(G) A designated substitute caregiver of a foster family home, a certified family home, or resource family. [¶] . . . [¶]

18. Notably, Health and Safety Code section 1507.25, subdivision (b), provides for unlicensed trained individuals to administer insulin.

(b)(1) Notwithstanding any other law, [the trained non-licensed individual] who is trained to administer injections by a licensed health care professional practicing within the professional's scope of practice, may administer subcutaneous injections of other medications, including insulin, as prescribed by the child's physician, to a foster child in placement.

(2) The following individuals shall be authorized to give prescribed injections, including insulin, in accordance with this subdivision:

(A) A relative caregiver.

(B) A nonrelative extended family member.

(C) A foster family home parent. [¶] . . . [¶]

(c) For purposes of this section, administration of an insulin injection shall include all necessary supportive activities related to the preparation and administration of the injection, including glucose testing and monitoring. [¶] . . . [¶]

19. The case law is consistent with Article 3.5, which concludes the administration of insulin does not rise to the level of medical service, incidental or otherwise. Outside of hospitals and other licensed healthcare facilities, "insulin is normally administered by laypersons according to a physician's directions, most often by the diabetic persons themselves or by friends or family members." (*American Nurses Assn. v. Torlakson* (2013) 57 Cal.4th 570, 576 (*Torlakson*).) A responsible layperson is fully capable of blood testing and injecting Claimant according to her physician's directions, were it to be required.

Analysis

20. Claimant's medical needs do not rise to the level of incidental medical services or to skilled nursing services. Accordingly, Claimant does not require LVN respite. (Factual Findings 8-38.)

21. Were Claimant to require the administration of glucagon or insulin during respite, the Lanterman Act does not require Claimant have an LVN respite provider to provide these medical services. (Legal Conclusions 6-19.)

22. Claimant has the rights provided for under the Lanterman Act. The Lanterman Act does not prohibit appropriately trained non-LVNs, such as family

members, from administering insulin or glucagon to children with diabetes who reside in their own home. Further, the Lanterman Act specifically provides that appropriately trained non-LVNs, such as family members, may administer glucagon to children placed in foster care. (Legal Conclusions 3-19.)

23. A reasonable reading of the Lanterman Act based on the established evidence in this matter is that an appropriately trained non-LVN may administer insulin or glucagon to a consumer consistent with the courts finding in *Torlakson* which concluded "the practical reality that most insulin administered outside of hospitals and other clinical settings is in fact administered by laypersons." (*Torlakson*, 57 Cal.4th at p. 575.)

Conclusion

24. Claimant is 17 years old. As a child and young adult, she has lived with multiple medical conditions, including asthma, epilepsy, and diabetes. As she has matured into a young lady, soon to be heading off to college, Claimant has taken great care to manage the day-to-day requirements of her medical conditions. Claimant lays out her medication every evening before bed and independently takes her required medication in the morning and evening. Any medically related care or supervision Claimant may require during a period of respite, be it related to her diabetes, epilepsy, or other medical conditions does not rise to the level of incidental medical services. Further, to the extent Claimant may require assistance with the administration of insulin or glucagon, such assistance may be provided by a trained individual who is not an LVN.

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ORDER

Claimant's appeal is granted. Claimant does not require In-Home Respite Care to be provided by a Licensed Vocational Nurse.

DATE:

CHANTAL M. SAMPOGNA
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration under Welfare and Institutions Code section 4713, subdivision (b), within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.