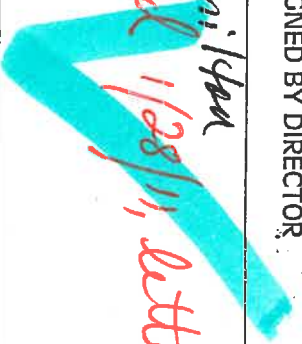


DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF DIRECTOR

**ACTION REFERRAL**

*Relogged from Medical Services to Wells on 1/20/11 per Chel dup.*

TO <i>Wells</i>	DATE <i>1-19-11</i>
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DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>401813</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>cc: Hani/you</i> <i>Cheand 1/28/11, letter attached</i> 	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>1-31-11</i> DATE DUE _____ <input type="checkbox"/> Necessary Action

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			
2.			
3.			
4.			

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF DIRECTOR

ACTION REFERRAL

TO	DATE
Medical Services / Lalaldrp	1-19-11

DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER  000313	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR _____	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE 1-28-11
	<input type="checkbox"/> FOIA DATE DUE _____
	<input type="checkbox"/> Necessary Action

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			
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**RECEIVED**

JAN 19 2011

Department of Health & Human Services  
OFFICE OF THE DIRECTOR

Mark and Wendy Fitzhenry  
10 Brigadier Dr.  
Charleston, SC 29407

January 11, 2011

To Whom It May Concern:

Our 3 yr. old daughter, Katelyn Grace Fitzhenry, was diagnosed with Down's Syndrome, Autism, Congenital Hypothyroidism, and Epilepsy. Needless to say, her needs for multiple therapy are numerous. Since 10 months of age, she has been receiving weekly PT, OT, and Speech Therapy covered by the TIEFRA/Katie Beckett Medicaid Program. This has helped her tremendously towards becoming more functional in life, although much more needs to be accomplished in therapy towards her future. In fact, Katelyn's developmental pediatrician just recommended 20 hours of ABA therapy for Katelyn. There is presently a 3 yr. waiting list for the PDD waiver to receive funding for this therapy which is charged for private pay at \$2,000.00/month.

One of the new Medicaid cuts set to begin February 1, 2011, is a reduction in the number of rehabilitative therapy visits covered per year by private therapists. This has caused the amount of weekly therapy sessions that my daughter is receiving to be cut in half. Of particular concern is that Katelyn is not speaking yet and is unable at the present time to chew food appropriately. With her speech therapy sessions cut back, this will greatly affect her progress in this area alone.

Furthermore, because of the new "cap" on therapy sessions to 75 visits/year, and the possible retroactive date of July, 2010, many disabled children will have already used their portion by February and will have to wait 5 more months to receive more therapy. Had these families been properly notified, parents could have had the choice to distribute their children's therapy accordingly so that their children would not be completely without. Children's progress does not stay in a neutral position—it either moves forward or backwards. These children will regress without therapy, even possibly negating the therapy efforts already received.

Obviously, there WILL be long-term consequences in reducing the therapy that these children receive. These children will be greatly hindered in becoming functional in life, their contribution to society greatly limited, which could cause them to be forced into state institutional care. This care will ultimately cost the state more than they are saving by these cutbacks, and these now adults with disabilities will not have had the

Department of Health & Human Services  
OFFICE OF THE DIRECTOR

JAN 19 2011

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10 Brigadier Dr.  
Charleston, SC 29407

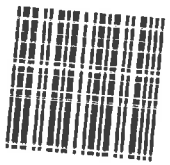
Mr. Kenneth Foreman, DHH Director  
SCD HHS  
P.O. Box 8602  
8206  
Columbia, SC 29202

JAN 18 2011  
FEB 03 2011

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JAN 14, 11  
\$3.24  
00052779-03

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF DIRECTOR

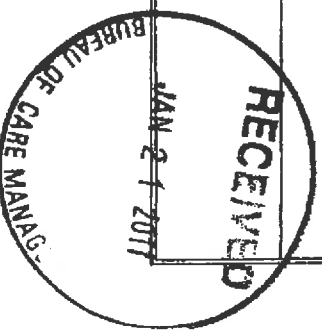
ACTION REFERRAL

*Relogged from Medical Services to Wells on 1/20/11 per Wal dup.*

TO <i>Wells</i>	DATE <i>1-19-11</i>
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DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>000 313</i> <i>401813</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>cc: Hami/400</i>	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>1-31-11</i>
	<input type="checkbox"/> FOIA DATE DUE _____
	<input type="checkbox"/> Necessary Action

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1. <i>Sheila B. Platts</i>	<i>MS 01/28/11</i>		
2.			
3.			
4.			



**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**OFFICE OF DIRECTOR**

**ACTION REFERRAL**

TO <i>Medical Services / Walchke</i>	DATE <i>1-19-11</i>
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DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOC NUMBER <i>313</i> <i>001913</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR _____	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>1-28-11</i> _____  <input type="checkbox"/> FOIA DATE DUE _____  <input type="checkbox"/> Necessary Action

APPROVALS <small>(Only when prepared for director's signature)</small>	APPROVE	* DISAPPROVE <small>(Note reason for disapproval and return to preparer.)</small>	COMMENT
1.			
2.			
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**RECEIVED**

JAN 19 2011

Department of Health & Human Services  
OFFICE OF THE DIRECTOR

Mark and Wendy Fitzhenry  
10 Brigadier Dr.  
Charleston, SC 29407

January 11, 2011

To Whom It May Concern:

Our 3 yr. old daughter, Katelyn Grace Fitzhenry, was diagnosed with Down's Syndrome, Autism, Congenital Hypothyroidism, and Epilepsy. Needless to say, her needs for multiple therapy are numerous. Since 10 months of age, she has been receiving weekly PT, OT, and Speech Therapy covered by the TEFRA/Katie Beckett Medicaid Program. This has helped her tremendously towards becoming more functional in life, although much more needs to be accomplished in therapy towards her future. In fact, Katelyn's developmental pediatrician just recommended 20 hours of ABA therapy for Katelyn. There is presently a 3 yr. waiting list for the PDD waiver to receive funding for this therapy which is charged for private pay at \$2,000.00/month.

One of the new Medicaid cuts set to begin February 1, 2011, is a reduction in the number of rehabilitative therapy visits covered per year by private therapists. This has caused the amount of weekly therapy sessions that my daughter is receiving to be cut in half. Of particular concern is that Katelyn is not speaking yet and is unable at the present time to chew food appropriately. With her speech therapy sessions cut back, this will greatly affect her progress in this area alone.

Furthermore, because of the new "cap" on therapy sessions to 75 visits/year, and the possible retroactive date of July, 2010, many disabled children will have already used their portion by February and will have to wait 5 more months to receive more therapy. Had these families been properly notified, parents could have had the choice to distribute their children's therapy accordingly so that their children would not be completely without. Children's progress does not stay in a neutral position—it either moves forward or backwards. These children will regress without therapy, even possibly negating the therapy efforts already received.

Obviously, there WILL be long-term consequences in reducing the therapy that these children receive. These children will be greatly hindered in becoming functional in life, their contribution to society greatly limited, which could cause them to be forced into state institutional care. This care will ultimately cost the state more than they are saving by these cutbacks, and these now adults with disabilities will not have had the

opportunity to become what their potential would have allowed in living a fuller and more productive life.

Of course, we realize the reality in that Medicaid is going bankrupt. We also realize that many children and adults are receiving Medicaid unnecessarily. Could not these people be ferreted out of the system so that those who are truly in need receive the therapy and help that they so desperately need?

According to Federal law, any state that participates in the Medicaid program must provide certain mandatory services for children.<sup>1</sup> The federal government refers to these services as Early and Periodic Screening, Diagnosis, and Treatment (EPSDT).<sup>2</sup> Specifically, every state's Medicaid program must cover "necessary health care, diagnostic services, treatment...to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the state plan."<sup>3</sup>

In plain language, EPSDT requires that a state cover ALL medically necessary services for children that fall under a category of assistance that Medicaid provides. Even if it is not covered in the state plan, if it is a service that could be covered by Medicaid and it is medically necessary, then the state Medicaid agency MUST cover it.

Therefore, SCDHHS cannot legally refuse to cover certain medical supplies for children or limit the number of doctor visits or therapy services per year, if the assistance is in fact medically necessary. SCDHHS must look at the treating physician's recommendation and the medical documentation to decide if a service is medically necessary.<sup>4</sup>

Because of these reasons, we give this notice of appeal of the related services "cap" of 75 therapy visits per year on behalf of our daughter. We request a fair hearing before the South Carolina Department of Health and Human Services. Please respond accordingly.

Thank you,

*Mark & Wendy Fitzhugh*  
Mark and Wendy Fitzhugh

*General: Wendy.Fitzhugh@yahoo.com*  
*Phone: 843-743-763-1013 (home) 843-743-6248 (cell)*

1. 42 U.S.C. 1396 (a)
2. 42 U.S.C. 1396d (f)
3. 42 U.S.C. 1396d (f)(5)
4. See *Moore ex rel. Moore v. Meadows*, 674 F. Supp. 2d 1366, 1370-1371 (N.D. Ga. 2009)(citing to *Collins v. Hamilton*, 349 F.3d 371, 375 n. 8 (7<sup>th</sup> Cir. 2003)(a state's discretions to exclude services deemed "medically necessary" by an EPSDT



Department of Health & Human Services  
OFFICE OF THE DIRECTOR

JAN 19 2011

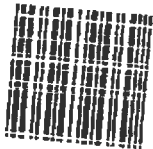
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10 Bingham Dr.  
Charleston, SC 29407

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Mr. Ernie Johnson, DHS Director  
SCD HHS  
P.O. Box 8602  
8204  
Columbia, SC 29202  
JAN 18 2011  
FEB 03 2011

Mark and Wendy Fitzhenry  
10 Brigadier Dr.  
Charleston, South Carolina 29407

Dear Ms. and Mrs. Fitzhenry:

Thank you for your letter dated January 11, 2011 regarding your concerns on the 75 hours cap (300 units) for Private Rehabilitative Therapy Services. While South Carolina Department of Health and Human Services (SCDHHS) does regret having to place any limitations on service volume, there are times when it is necessary. We have determined that there are systems changes that will be required prior to our enforcing this limitation; therefore, the implementation date has been postponed until April 1, 2011. We will make every effort to clarify the rules associated with this change so that the enrolled private therapists can know and understand the requirements for coordination with each child's primary care physician. This information will be made available in a Medicaid Bulletin. All Medicaid Bulletins and Provider Manuals are located on the agency website, [www.scdhhs.gov](http://www.scdhhs.gov).

While these limits will be in place, as indicated in the Private Rehabilitative Therapy and Audiological Services Manual, on pages 2-4, "Payment for services that exceed frequency limitations must only be justified as a result of an Early and Periodic screening, Diagnosis, and Treatment (EPSDT) examination, and pre-approved by SCDHHS." This policy remains unchanged; should a physician determine, through an EPSDT visit, that your child requires additional private therapy services, that physician should document the medical necessity and request additional visits. These requests must be made in writing. These requests must include an evaluation overview, proposed treatment plan with expected outcomes, relative progress notes, and anticipated units of services needed to address need(s). The documentation must indicate the diagnosis and/or functional impairment that establishes medical necessity, and must be signed by your child's physician. This documentation should be faxed to SCDHHS staff at 803-255-8222, Attention: Private Rehabilitative Therapy Services Authorization, prior to provision of the service. Failure to comply with these requirements may result in denial or recoupment of payment.

~~Again, we are disappointed with you~~ <sup>THAT</sup> ~~that~~ <sup>ANY WAY</sup> that any limitations are necessary. However, we will continue to work with you, physicians and therapists to ensure that services are made available for children in our state.

Sincerely,

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF DIRECTOR

ACTION REFERRAL

*Relogged from Medical Services to Wells on 1/20/11 on Wed dup.*

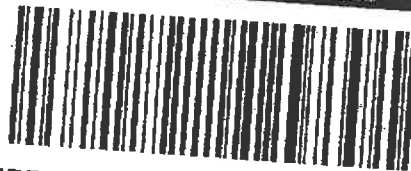
TO <i>Wells / Cannon</i>	DATE <i>1-19-11</i>
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DIRECTOR'S USE ONLY	ACTION REQUESTED	
1. LOG NUMBER <i>#01813</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____	
2. DATE SIGNED BY DIRECTOR <i>cc: Hamilton</i>	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>1-31-11</i> <input type="checkbox"/> FOIA DATE DUE _____ <input type="checkbox"/> Necessary Action	

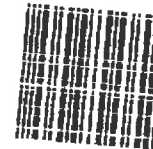
APPROVALS <small>(Only when prepared for director's signature)</small>	APPROVE	* DISAPPROVE <small>(Note reason for disapproval and return to preparer.)</small>	COMMENT
1.	<i>Sam-</i>	<i>1/20/11</i>	
2.	<i>Mr. Wells said someone from the Program side needs to make sure that these people have the correct dates for the cuts, etc - Thanks!</i>		
3.			
4.			

10 Brigadier Dr.  
Charleston, SC 29407

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CHARLESTON, SC  
29407  
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JAN 19 2011

Department of Health & Human Services  
OFFICE OF THE DIRECTOR

Ms. Emma Forester, DHH Director  
SCDHHS  
P.O. Box 8602  
Columbia, SC 29202

JAN 18 2011

FEB 08 2011

January 28, 2011

Mark and Wendy Fitzhenry  
10 Brigadier Drive.  
Charleston, South Carolina 29407


Dear Mr. and Mrs. Fitzhenry:

Thank you for your letter dated January 11, 2011 regarding your concerns on the 75 hours cap (300 units) for Private Rehabilitative Therapy Services. While South Carolina Department of Health and Human Services (SCDHHS) does regret having to place any limitations on service volume, there are times when it is necessary. We have determined that there are systems changes that will be required prior to our enforcing this limitation; therefore, the implementation date has been postponed until April 1, 2011. We will make every effort to clarify the rules associated with this change so that the enrolled private therapists can know and understand the requirements for coordination with each child's primary care physician. This information will be made available in a Medicaid Bulletin. All Medicaid Bulletins and Provider Manuals are located on the agency website, [www.scdhhs.gov](http://www.scdhhs.gov).

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Again, we share the disappointment with you that any limitations are necessary. However, we will continue to work with you, physicians and therapists to ensure that services are made available for children in our state. If you have any additional questions, please contact Sheila Platts, Division Director for Medical Support Services, at (803) 898-2655.

Sincerely,

  
Beverly G. Hamilton  
Bureau Director

BGH/pw