ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

JAN 25 1985

HEALTH AFFAIRS

BEFORE THE OFFICE, ASSISTANT

SECRETARY OF DEFENSE (HEALTH AFFAIRS)

UNITED STATES DEPARTMENT OF DEFENSE

Appeal of	)	
	)	
Sponsor:	)	OASD(HA) No. 84-43
	)	FINAL DECISION
SSN:	)	

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) in the CHAMPUS Appeal OASD(HA) Case File 84-43 pursuant to 10 U.S.C 1071-1089 and DoD 6010.8-R, chapter X. The appealing parties are the CHAMPUS beneficiary, the dependent child of an active duty member of the United States Navy, represented by her mother, and Belle Park Hospital, represented by Lawrence R. Mullen, Attorney at Law. The appeal involves the denial of inpatient psychiatric hospitalization and inpatient psychotherapy by professional providers from September 20, 1982, through April 29, 1983. The amount in dispute involves approximately $61,000 in hospital charges and $24,000 in professional services for psychotherapy, including outpatient psychotherapy through July 7, 1983.

The hearing file of record, the Hearing Officer's Recommended Decision, and the Analysis and Recommendation of the Director, OCHAMPUS, have been reviewed. It is the Hearing Officer's recommendation that the hospitalization from September 20, 1982, through April 29, 1983, be cost-shared by CHAMPUS, except for charges for psychotherapy provided by a hospital employee and charges for cardiac care. It is also the Hearing Officer's recommendation that the claims for psychotherapy up to a maximum of 5 sessions per 7-day period, provided by individual professional providers, be cost-shared if resubmitted to designate who provided the care, and the prevailing rate for the provider. The Hearing Officer's recommendations were based on findings that the hospitalization was medically necessary and appropriate medical care provided at the appropriate level, but that the psychotherapy provided by the hospital clinical social worker was concurrent care with the psychotherapy provided by the licensed professional counselor (an associate of the attending physician), and was thereby excluded from CHAMPUS cost-sharing. He also found that the licensed professional counselor was the agent of the attending physician and was, therefore, an authorized provider. CHAMPUS cost-sharing of the revised billing was recommended for the psychotherapy provided by the licensed professional counselor.

The Director, OCHAMPUS, concurs with the Hearing Officer's Recommended Decision to cost-share the claim of the hospital for room and board and medication; however, the Director nonconcurs with the recommendation to deny cost-sharing of the psychotherapy provided by the hospital clinical social worker and with the recommendation to cost-share the services of the licensed professional counselor.

The Director, OCHAMPUS, recommends issuance of a FINAL DECISION authorizing cost-sharing of the hospital's claim for room and board and medication, authorizing cost-sharing of the psychotherapy provided by the hospital clinical social worker, but denying cost-sharing for the services of the licensed professional counselor as not rendered by an authorized professional provider. The Director further recommends limitation of cost-sharing of psychotherapy to five sessions per week.

The Assistant Secretary of Defense (Health Affairs), after due consideration of the appeal record, rejects the Hearing Officer's Recommended Decision to deny CHAMPUS cost-sharing of the psychotherapy provided by the hospital clinical social worker and to authorize cost-sharing of the services of the licensed professional counselor. Under Department of Defense Regulation 6010.8-R, chapter X, the Assistant Secretary of Defense (Health Affairs) or his designee may reject the Hearing Officer's Recommended Decision and issue a FINAL DECISION based on the record. My rejection of the Recommended Decision in this appeal is based on my finding that the Hearing Officer improperly interpreted regulatory provisions pertaining to authorized individual professional providers.

The FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is, therefore, to deny CHAMPUS cost-sharing of the services of the licensed professional counselor and to authorize CHAMPUS cost-sharing of the inpatient hospitalization, including the charges for psychotherapy provided by the hospital clinical social worker. This decision is based on findings that the hospitalization was medically necessary and appropriate medical care and was provided at the appropriate level. The decision to deny CHAMPUS cost-sharing of the services of the licensed professional counselor is based on findings that the counselor is not an authorized provider under CHAMPUS and that his services are excluded as concurrent care and not appropriate medical care.

FACTUAL BACKGROUND

The beneficiary (born September 24, 1969) was referred for evaluation by Dr. Allan Stark on June 4, 1982, following an increase in uncontrollable, anti-social behavior including a suicide gesture, shoplifting, and potential fire-setting. Her mother described the beneficiary as refusing parental discipline and failing in school. She was seen for counseling in 1982 and also underwent a neurological evaluation in 1982. Projective testing in June 1982 revealed disturbances in her feelings of

belonging, both in a family and social sense, according to her hospital admission summary. Physical maturation was noted as ahead of sexual identity formation. The diagnoses by Dr. Stark were conduct disorder, undersocialized, non-aggressive, and attention deficit disorder without hyperactivity. A development language disorder: experience type, was also noted.

The beneficiary was admitted to Alief General Hospital on June 23, 1982, for inpatient psychiatric care. The initial treatment plan estimated the length of stay at one year. The beneficiary received individual psychotherapy three times per week, group therapy five times per week and one family session per week from the hospital clinical social worker, Ms. Joanne Schwartz. The attending psychiatrist, Dr. Allen Stark, did not provide psychotherapy but provided administrative services of managing the treatment teams. Mr. Richard Neuman, a State of Texas Licensed Professional Counselor, with a Masters Degree in Education, provided psychotherapy to the beneficiary as an associate of Dr. Stark and Dr. I.A. Kraft. Mr. Neuman was under contract to Dr. Kraft, a psychiatrist, to provide psychotherapy to his patients; Dr. Stark was also under contract to provide administrative psychiatric services to patients of Dr. Kraft. Mr. Neuman provided three individual psychotherapy sessions, one group session, and one family session per week, with Dr. Stark, Mr. Neuman and the hospital clinical social worker, Ms. Schwartz, all in attendance at the family session. Dr. Stark briefly saw the beneficiary five times per week according to his testimony but did not provide psychotherapy. He met with Mr. Neuman twice a week to discuss the beneficiary's treatment and also met each week with the treatment team of Mr. Neuman, Ms. Schwartz, and other hospital staff involved with the beneficiary's care. Ms. Schwartz also met weekly with a separate hospital treatment team including her supervisor, a clinical social worker, and the staff psychiatrist. In addition to psychotherapy, the beneficiary received occupational, art, and recreational therapies and attended school at the hospital.

On October 12, 1982, the beneficiary was transferred to Belle Park Hospital, due to the closure of the psychiatric wing of Alief General Hospital. She was discharged to home on April 29, 1983, but continued outpatient therapy with Mr. Neuman once per week until July 7, 1983. She began attending public school classes in the fall 1983.

CHAMPUS claims were submitted by Alief General Hospital for care provided June 23, 1982 through October 12, 1983, the date of transfer to Belle Park Hospital, in the amount of $26,726.10. The CHAMPUS Fiscal Intermediary for the State of Texas, Wisconsin Physicians Service, allowed only the first 90 days of inpatient care (June 23 through September 20, 1982) and issued payment of $20,108.10. Care beyond 90 days was found not medically necessary by the fiscal intermediary.

Belle Park Hospital submitted claims for care provided October 12, 1983, through April 29, 1983, in the amount of

$54,248.76, including charges for psychotherapy by the clinical social worker. An additional claimed amount of $760.00 was presented at the hearing, bringing the total to $55,008.76. Other insurance proceeds of $4,867.50 are pending from G.I.C. Insurance
Company. Wisconsin Physicians Services denied cost-sharing of all the claims from Belle Park Hospital.

Claims for psychotherapy provided by Mr. Neuman were billed by Dr. Stark. The claim forms noted Dr. Stark as the provider of services and included claims for inpatient individual, group, and family therapy provided June 23, 1982, through April 29, 1983, and for outpatient therapy from April 30, 1983, through July 7, 1983. The beneficiary was charged a daily rate (initially $75.00 per day, then $120 per day) for the services of Mr. Neuman and Dr. Stark. In January 1983, the billing changed to a global rate of $600 per week. The total claimed by Dr. Stark is $24,220 in billed charges. The fiscal intermediary initially paid $5,480 for care provided through September 20, 1982. Of these payments, a number of services were later denied as exceeding regulatory maximums for frequency of inpatient psychotherapy. Care subsequent to September 20, 1982, was denied as not medically necessary. The beneficiary appealed to OCHAMPUS.

The OCHAMPUS First Level Appeal Decision found inpatient hospitalization beyond 90 days was not the appropriate level of care and that the individual provider's (licensed professional counselor's) psychotherapy was not medically necessary or appropriate medical care.

The beneficiary requested a hearing which was held on December 7, 1983, in Houston, Texas, before Sherman R. Bendalin, CHAMPUS Hearing Officer. The Hearing Officer has issued his Recommended Decision and issuance of a FINAL DECISION is proper.

ISSUES AND FINDINGS OF FACTS

The primary issues in this appeal are (1) whether inpatient hospitalization from June 23, 1982, through April 29, 1983, was medically necessary and appropriate medical care provided at the appropriate level; (2) whether the licensed professional counselor is an authorized CHAMPUS provider and whether his services are appropriate medical care; (3) whether the services of both the clinical social worker and the licensed professional counselor were medically necessary concurrent care; and (4) whether the psychotherapy provided by the clinical social worker exceeds regulatory limits.

Medically Necessary/Appropriate Medical Care
Appropriate Level of Care

Under Department of Defense Regulation 6010.8-R, the regulation governing CHAMPUS, services and supplies which are medically necessary in the diagnosis and treatment of an illness or injury may be cost-shared. Medically necessary is defined as:

> ". . . the level of service and supplies (that is, frequency, extent, and kinds) adequate for the diagnosis and treatment of illness or injury . . . . medically necessary includes [the] concept of appropriate medical care." (Chapter II, B. 104.)

Appropriate medical care is defined as:

> "a. That medical care where the medical services performed in the treatment of a disease or injury, or in connection with an obstetrical case or well-baby care, are in keeping with the generally accepted norm for medical practice in the United States;
>
> "b. The authorized individual professional provider rendered the medical care is qualified to perform such medical services by reason of his or her training and education and is licensed and/or certified by the state where the service is rendered or appropriate national organization or otherwise meets CHAMPUS standards; and
>
> "c. The medical environment in which the medical services are performed is at the level adequate to provide the required medical care. (DoD 6010.8-R, Chapter II. B.14)

Similar to subsection C above, institutional care must be at the appropriate level required to provide the medically necessary services and care above that level is excluded from CHAMPUS cost-sharing (DoD 6010.8-R, chapter IV. B.1.g.,G.3).

Applying these authorities to the facts in this appeal, the Hearing Officer found the hospitalization at Alief General Hospital and Belle Park Hospital from June 23, 1982, through April 29, 1983, was medically necessary and appropriate medical care provided at the appropriate level. Following my review of the record, I concur and adopt his finding on this issue.

At the hearing, OCHAMPUS questioned not only the care subsequent to 90 days, but also the entire period of hospitalization based on concerns over the quality of services provided by Mr. Neuman, the licensed professional counselor. I share these concerns. My findings on his qualifications under CHAMPUS are detailed infra; however, I find sufficient evidence in the record to substantiate cost-sharing of the hospitalization without the services of Mr. Neuman.

The medical records, medical review reports, and testimony establish the beneficiary was a disturbed young lady in need of intensified psychotherapy in a structured environment. Her

anti-social conduct included shop-lifting, fire-setting, threats against her sister, and suicide gestures. OCHAMPUS basically agreed that a period of acute inpatient care was appropriate; however, OCHAMPUS had concerns regarding quality of care issues in this case. For example, questions regarding the length of the beneficiary's inpatient stay and whether a residential treatment center was an appropriate level of care for the beneficiary were raised. While the evidence of record regarding these issues is less than conclusive, I believe it is sufficient to authorize CHAMPUS cost-sharing of the inpatient hospitalization from June 23, 1982, through April 29, 1983. As discussed by the Hearing Officer, medical reviews by psychiatrists associated with the American Psychiatric Association, as well as the OCHAMPUS Medical Director (a psychiatrist), essentially support the appropriateness of the length of hospitalization. Of four medical reviewers, three stated the length of stay was appropriate for the diagnoses, although questions were raised over the lack of documentation of physician involvement in the treatment. In view of medical review support for the length of stay, I find the preponderance of evidence supports the acute facility as the appropriate level of care; however, testimony at the hearing reveals potentially less than full consideration was given to the possible transfer to a residential treatment center following stabilization of this beneficiary. Neither the counselor nor the attending psychiatrist apparently has experience with the care provided in residential treatment centers and deferred a decision regarding the availability of RTC treatment to the hospital clinical social worker. The social worker testified she knew of no RTC that could provide adequate treatment for this beneficiary and, from her testimony, appears to discount such treatment for the diagnosis in issue although she acknowledged RTCs did admit adolescents with this beneficiary's diagnoses. Testimony also revealed some consideration was given of the mother's desire that the beneficiary remain in Houston. No RTC was contacted during the hospitalization to evaluate the beneficiary's placement.

Another troublesome question in this appeal is physician involvement in the beneficiary's treatment. The American Psychiatric Association medical reviewers and the OCHAMPUS Medical Director commented on the absence of documentation in the medical records of physician involvement. Testimony at the hearing clearly established that the attending physician, Dr. Stark, provided no psychotherapy. He testified he saw the beneficiary 5 days a week for up to 30 minutes a day. All of the psychotherapy was provided by the hospital clinical social worker and the Licensed Professional Counselor, Mr. Neuman. Progress notes by Dr. Stark are brief and occasional, but testimony at the hearing supports sufficient physician involvement to authorize cost-sharing. Dr. Stark met with Mr. Neuman and Ms. Schwartz, the clinical social worker, and other hospital treatment staff weekly to discuss the beneficiary's condition and update treatment plans. Dr. Stark presumably conducted a mental status examination during his brief daily visits with the beneficiary and during his attendance at the family therapy once per week. While adequate medical record documentation would have alleviated

the need for indepth inquiry, I find the attending psychiatrist was adequately involved in the treatment. One further inquiry is required on the issue of appropriate medical care. As I find in the following section that Mr. Neuman, the counselor, is not an authorized CHAMPUS provider, are the intensity and quality of the remaining care adequate to justify cost-sharing? My review of the record indicates it is. Even without consideration of the services of Mr. Neuman, the beneficiary received a structured environment with standard treatment modalities of occupational, recreational and art therapies and special education by qualified teachers. Individual psychotherapy 3 times per week, group therapy 5 times per week and one family session per week were conducted by the hospital clinical social worker, a qualified practitioner. The record reveals this care to be adequate in intensity and quality for the beneficiary's condition. Therefore, I find the claims for inpatient care from June 23, 1982, through April 29, 1983, may be cost-shared except as limited in a later section of this FINAL DECISION and except for charges for cardiac care in the amount of $240.00 which were not documented as medically necessary.

Authorized Provider
Appropriate Medical Care

Under CHAMPUS, there are two basic types of providers - institutional and individual professional providers. Obviously, Mr. Neuman, the Licensed Professional Counselor, is not an institutional provider. Under Chapter VI of DoD 6010.8-R, individual professional providers of care are generally defined as:

> ". . . those providers who bill for their services on a fee-for-service basis and are not employed or contracted with by an institutional provider. This category also includes those individuals who have formed professional corporations or associations qualifying as a domestic corporation under Section 301.7701-5 of the Federal Income Tax Regulations. Such individual professional providers must be licensed by the local licensing agency for the jurisdiction in which the care is provided; or in the absence of licensure be certified by or be eligible for membership in the appropriate national or professional association which sets standards for the profession of which the provider is a member. Services provided must be in accordance with good medical practice and prevailing standards of quality of care and within recognized utilization norms." (DoD 6010.8-R, chapter VI,C.)

Chapter VI also specifically lists those types of providers that are authorized to provide services to CHAMPUS beneficiaries.

Included as authorized providers, relevant to this appeal, are clinical psychologists, psychiatric and/or clinical social workers, and marriage and family counselors.

To qualify as a clinical psychologist, the provider must either:

> "(a) Be licensed or certified by the jurisdiction in which practicing, have a doctoral degree in clinical psychology and a minimum of two years of supervised experience in clinical psychology in a licensed hospital, a mental health center, or other appropriate clinical setting as determined by the Director, OCHAMPUS (or a designee), or
>
> "(b) Be listed in the National Register of Health Service Providers in Psychology, compiled and published by the Council of the National Register of Health Services providers in Psychology. (DoD 6010.8-R, Chapter VI 3.c.)

Mr. Neuman testified he had a bachelor's degree in psychology and a Master's Degree in Guidance and Counseling from the Education, not Psychology, Department of the University of Houston. He has no doctoral degree in psychology and is not listed in the National Register of Health Service Providers in Psychology. Therefore, Mr. Neuman fails to meet any of the requirements for qualification as a clinical psychologist under CHAMPUS. Similarly, as he has no degree or certification as a social worker, he does not qualify under that category of authorized providers. Finally, Mr. Neuman provided individual and group psychotherapy on an inpatient basis and not marriage and family counseling services. He has not maintained he is a marriage and family counselor but a Licensed Professional Counselor. I find Mr. Neuman does not qualify as, and did not provide the services of, a marriage and family counselor. Therefore, I find Mr Neuman does not qualify as an individual professional provider of care under CHAMPUS and that his services are not eligible for cost-sharing.

The Hearing Officer did not consider Mr. Neuman's qualifications but instead found the professional corporation of Dr. Kraft to be the authorized professional provider. Mr. Neuman, under contract to the corporation, was an agent for the corporation and was, therefore, according to the Hearing Officer, clothed with the status of Dr. Kraft. I find this logic obfuscatory and contrary to the above cited regulatory authorities. The issue herein is not a legal question of agency but a question of regulatory provisions and quality health care. Whether or not Mr. Neuman was an agent of an authorized provider is simply not relevant. Mr. Neuman provided the psychotherapy and it is his status that is in issue. The CHAMPUS regulation specifically lists those types of providers who are authorized to

provide primary health care services (e.g., psychotherapy). The clear intent of Chapter VI of DoD 6010.8-R is to restrict CHAMPUS cost-sharing to only those primary services provided by individuals that process the requisite education and experience attendant to the disciplines listed; no others may qualify as authorized CHAMPUS providers. To qualify an individual by mere association with an authorized provider is irrational; for under that criterion, anyone, regardless of individual qualifications, could presumptively provide CHAMPUS covered services. Obviously, this would obliterate the regulatory restrictions on types of providers and make it impossible to assure quality health care for CHAMPUS beneficiaries. Therefore, I reject the Hearing Officer's finding on this issue as contrary to regulatory authority.

Under DoD 6010.8-R, Chapter IV, as discussed above, CHAMPUS cost-sharing is limited to medically necessary services, which includes the concept of appropriate medial care. The definition, quoted above, of appropriate medical care includes a criterion that the individual professional provider is qualified to perform the services by reason of training and education and is licensed and/or certified by the state. Mr. Neuman is licensed by the State of Texas as a "professional counselor"; however, a professional counselor is not a recognized CHAMPUS provider. Therefore, his license is of no relevance in this proceeding. In reviewing his qualifications, I find Mr. Neuman does not provide appropriate medical care under CHAMPUS as he lacks the training and experience to provide psychotherapy. His education, discussed above, is not in the field of psychology but in education. According to his testimony, his only experience with adolescents was gained "on the job" with Dr. Kraft. The Medical Director of the American Psychiatric Association was requested by OCHAMPUS to offer his opinion on the qualifications of a Masters in Education to provide individual psychotherapy. The response was that the level of education, even if his services were supervised by a physician, is not consistent with the generally accepted norm of medical (psychiatric) practice in the United States. The appealing parties offered no evidence of a contrary view.

Also of relevance to the general issue of the appropriateness of the care is the APA Guidelines for Psychiatrists in Consultative, Supervisory, or Collaborative Relationships with Nonmedical Therapists, American Journal of Psychiatry, 137:11, November 1980. Therein, the guidelines clearly indicate a psychiatrist's bill should reflect the services actually rendered and should not include charges for services they do not personally render. Services of a non-medical therapist may be billed with the services of a psychiatrist if the name of the therapist, his/her training, and rate are indicated. Herein, the CHAMPUS claims indicated Dr. Stark provided the care and contained a rate of $120.00 an hour, obviously a psychiatrist's rate. Neither the bills nor claims indicated Mr. Neuman provided all but one hour of family therapy or included his rate. This was discovered only when claims were

denied and appealed. The testimony of Mr. Neuman reveals he received a predetermined percentage of all billings for his patients with the remainder to Dr. Kraft, who provided no services to the patient. Case administration was provided by Dr. Stark. The level of inpatient psychotherapy was apparently the same for all of Mr. Neuman's and Dr. Stark's patients, or at least the weekly charges of $600.00 per patient, was the same. Further, the bills and claims indicated only individual psychotherapy when, in fact, individual, group, and family therapy were provided. I find these billing practices to be confusing at best and not in accordance with the APA guidelines.

In summary, I find the services of the Licensed Professional Counselor, Mr. Neuman, cannot be cost-shared by CHAMPUS as he fails to qualify as an authorized individual professional provider of care and his services also fail to meet the CHAMPUS definition of appropriate medical care.

Concurrent Care
Medically Necessary

As discussed above, under DoD 6010.8-R, Chapter IV, CHAMPUS will cost-share only medically necessary services; i.e., those services required in the treatment of illness or injury. This concept is evident in regulatory limits on payment of professional services provided by more than one physician in an inpatient admission. This payment limitation on concurrent care is as follows:

> "Inpatient Medical Care: Concurrent. If during the same admission a beneficiary receives inpatient medical care (non-emergency, non-maternity) from more than one physician, additional benefits may be provided for such concurrent care if required because of the severity and complexity of the beneficiary's condition. Any claim for concurrent medical care must be reviewed before extending benefits in order to ascertain the medical condition of the beneficiary at the time the concurrent medical care was rendered. In the absence of such determination, benefits are payable only for inpatient medical care rendered by the attending physician." (DoD 6010.8-R, chapter IV, c.3.f.)

This provision, coupled with the medically necessary requirement, is intended to limit CHAMPUS payment where the patient receives care from one or more providers during an inpatient stay. The basis for this provision is that a patient has only one primary provider of care who is responsible for both the medical and surgical care, for example. The exception applies where the severity and complexity of the beneficiary's condition requires multiple providers. In previous decisions, this office has applied this provision to care provided by a

physician and a clinical psychologist (See OASD(HA) File 16-75 and OASD(HA) File 83-10). Similarly, I find the concurrent care provision applies herein where care was provided by a professional counselor and a clinical social worker.

The Hearing Officer found this provision applied to the facts in this appeal and recommended denial of the psychotherapy provided by the hospital clinical social worker. I agree the limitation on concurrent medical care applies to this appeal; however, I find it is the services of the professional counselor that are excluded, not the services of the clinical social worker. I also find the concept of medically necessary prohibits cost-sharing of the duplicate services.

The record in this appeal establishes the beneficiary received three individual psychotherapy sessions per week, one group, and one family from Mr. Neuman, the associate of Dr. Kraft and Dr. Stark, and three individual, five group and one family from Ms. Schwartz, the hospital clinical social worker. Dr Stark, Mr. Neuman, and Ms. Schwartz all attended the one family session with both the hospital and Mr. Neuman billing for the session.

At the hearing, OCHAMPUS questioned Ms. Schwartz on any differences between her psychotherapy and that provided by Mr. Neuman. Ms. Schwartz testified her therapy was based on hospital-based problems of peer interaction, school problems, for example, and Mr. Neuman concentrated on areas outside the hospital environment. Both therapists participated in family therapy and no distinction was made in the focus. The Hearing Officer was not persuaded that the therapy of both providers was different and neither am I. The problems of this adolescent of stealing, failing in school, and peer relationship, for example, that precipitated her hospitalization, certainly were evidenced in her conduct during hospitalization. I can find no practical difference between the therapies, particularly for individual psychotherapy.

An opinion from the Deputy Medical Director of the American Psychiatric Association is relevant to this issue. Dr. Donald Hammersley, responding to a question posed by OCHAMPUS, opined:

> ". . . the level of resource utilization is justifiably suspect and is not consistent with the usual and customary practice of psychiatry.
>
> "As a general rule a patient has but one therapist." (Hearing file, exhibit 54)

Ms. Schwartz testified it was common for a patient to have two independent therapists providing individual psychotherapy. I find her statement is not supported by authoritative opinion and is opposite to the usual and customary practice of psychiatry.

I also find two therapists were not required because of the severity and complexity of the beneficiary's condition. The appeal file and testimony at the hearing indicate the frequency of services and use of two providers were a normal practice and not dictated by a clinical judgment of the beneficiary's condition.

This beneficiary received a total of six individual, six group and one family psychotherapy sessions per week. While Dr. Stark testified the beneficiary benefited from this level and intensity of services, I find the treatment duplicate, contrary to good medical practice, and an example of costly overutilization.

The Hearing Officer found, based on testimony of Dr. Stark, that Mr. Neuman was the primary therapist; however, as Mr. Neuman is not an authorized CHAMPUS provider, his claims cannot be cost-shared. Can then the services of Ms. Schwartz be considered medically necessary and appropriate? On the facts of this appeal, I find sufficient basis for cost-sharing. The record establishes Ms. Schwartz met frequently with the attending psychiatrist, Dr. Stark, to discuss the treatment of the beneficiary. Ms. Schwartz also met with hospital staff. I find her treatment was sufficiently interrelated with Dr. Stark to constitute medically necessary services. Therefore, in summary, I find the frequency and intensity of the services of Mr. Neuman and Ms. Schwartz to be not medically necessary or appropriate medical care, and that only the services of one therapist may be cost-shared as concurrent care was provided and was not required by the beneficiary's condition. I further find the services of Ms. Schwartz, the hospital clinical social worker, to be medically necessary and appropriate but subject to CHAMPUS cost-sharing limitations as set forth in the following section.

Finally, the services of Dr. Stark, the attending psychiatrist, must be considered. The evidence is clear that Dr. Stark did not provide any individual or group psychotherapy, but did attend the family session. He provided administrative services in managing the treatment team. CHAMPUS cost-shares medical administrative services attendant to the provision of psychotherapy and administrative services are not separately considered for cost-sharing. As Dr. Stark provided no direct medical care, his services cannot be cost-shared. From the testimony, it appears he did not conduct the family session but, again, left the direct provision of services to Mr. Neuman.

Psychiatric Procedures

Under DoD 6010.8-R, chapter IV C. 3.i., cost-sharing of psychiatric procedures are subject to the following limits:

> "(1) Maximum Therapy Per Twenty-Four (24)-hour Period: Inpatient and Outpatient. Generally, CHAMPUS benefits are limited to no more than one (1) hour of individual and/or

> group psychotherapy in any twenty-four (24)-hour period, inpatient or outpatient. However, for the purpose of crisis intervention only, CHAMPUS benefits may be extended for up to two (2) hours of individual psychotherapy during a twenty-four (24)-hour period.
>
> "(2) Psychotherapy: Inpatient. In addition, if individual or group psychotherapy, or a combination of both, is being rendered to an inpatient on an ongoing basis (i.e., non-crisis intervention), benefits are limited to no more than five (5) one-hour therapy sessions (in any combination of group and individual therapy sessions) in any seven (7) day period.
>
> "(3) Review and Evaluation: Outpatient. All outpatient psychotherapy (group or individual) are subject to review and evaluation at eight (8) session (visit) intervals. Such review and evaluation is automatic in every case at the initial eight (8) session (visit) interval and at the twenty-four (24) session (visit) interval (assuming benefits are approved up to twenty-four (24) sessions). More frequent review and evaluation may be required if indicated by the case. In any case where outpatient psychotherapy continues to be payable up to sixty (60) outpatient psychotherapy sessions, it must be referred to peer review before any additional benefits are payable. In addition, outpatient psychotherapy is generally limited to a maximum of two (2) sessions per week. Before benefits can be extended for more than two (2) outpatient psychotherapy sessions per week, peer review is required."

Under these provisions, inpatient psychiatric care is limited to no more than five one-hour therapy sessions, individual and/or group in any seven day period. For purposes of crisis intervention, up to two individual sessions per day are authorized. The Hearing Officer found no evidence of crisis intervention for psychotherapy provided during the inpatient care but recommended cost-sharing of psychotherapy provided by Mr. Neuman from June 1 through June 22, 1982, based on crisis intervention. I concur in the recommendation to cost-share only five sessions per week during the hospitalization but must reject the latter recommendation to cost-share the services of Mr. Neuman for crisis intervention or any other services, as I have found Mr. Neuman is not an authorized provider.

The record in this appeal reveals a pattern and practice by both Mr. Neuman and Ms. Schwartz to provide a reasonably predetermined number of patient contracts not dependent upon the condition of the patient. That is, the frequency of psychotherapy was prescheduled and conducted without regard to any crisis intervention. The medical records also reveal no evidence of a crisis and medical review supports this conclusion. Therefore, I find cost-sharing of psychotherapy is limited to the three individual sessions and two group sessions per week as conducted by the hospital clinical social worker. The family session is considered a group session for purposes of the above quoted provision and therefore cannot be separately cost-shared.

SUMMARY

In summary, the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs) is to cost-share the inpatient care provided at Alief General and Belle Park Hospitals from June 23, 1982, through April 29, 1983, except for $240.00 claims for cardiac care and psychotherapy provided by Ms. Schwartz, the hospital clinical social worker, in excess of five sessions per week, including family sessions. This decision is based on findings the inpatient care provided was medically necessary, appropriate medical care provided at the appropriate level of care, but that the psychotherapy in excess of the regulatory limit of five sessions per week was not required for crisis intervention. As the appeal file reflects appropriately $4,867 is presently due from other insurance, evidence of payment of this amount or denial of payment by the insurance company must be received prior to CHAMPUS payment.

Regarding the professional services of Mr. Neuman, the professional counselor, I find he is not an authorized provider under CHAMPUS and does not meet education and training standards to provide appropriate medical (psychotherapy) care. Therefore, the claims submitted for psychotherapy provided by Mr. Neuman are not payable by CHAMPUS and, all claims, including outpatient care prior and subsequent to the hospitalization, are denied. As Dr. Stark did not provide direct medical care, no administrative services provided by him may be cost-shared. I have further found the frequency of psychotherapy services provided by Mr. Neuman and Ms. Schwartz far exceed the level of medically necessary services, constitute concurrent care, and only the services of Ms. Schwartz can be cost-shared subject to the above limitations.

As this decision results in erroneous payments to Dr. Kraft, Mr. Neuman's associate, this matter is referred to the Director, OCHAMPUS, for appropriate action under the Federal Claims Collection Act. Issuance of this FINAL DECISION completes the administrative appeals process under DoD 6010.8-R, chapter X, and no further administrative appeal is available.

Vernon McKenzie
Acting Principal Deputy Assistant Secretary

REC DEC
84-43

RECOMMENDED DECISION
Claim for CHAMPUS Benefits
Civilian Health and Medical Program of the
Uniformed Services
(CHAMPUS)

Beneficiary _____ Sponsor's SSN _____

Sponsor _____

This case is before the undersigned Hearing Officer pursuant to the Appealing Party's Request for Hearing of the First Level Appeal determination. The Office of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) has granted the Appealing Party's Request for Hearing. The Hearing was held in Houston, Texas on Wednesday, December 7, 1983, pursuant to Regulation DoD 6010.8-R, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), Chapter X, "Appeal and Hearing Procedures." The hearing had originally been noticed for Houston, Texas on October 19, 1983, but due to a timely Motion for Continuance and Notice of Appearance by Appealing Party Belle Park Hospital, Houston, Texas, the hearing was continued. Appearing on behalf of Belle Park Hospital were Attorneys Fulbright & Jaworski. By mutual consent among all the parties concerned, the hearing was continued from October 19, 1983 until this date. The location of the Hearing was building No. 1, Ellington AFB, Houston, Texas. The hearing began

at 9:05 o'clock a.m. and concluded at 2:11 o'clock p.m.. The Beneficiary was not present. The mother of the Beneficiary, [redacted] was present. Present on behalf of OCHAMPUS was William A. Hough, Assistant General Counsel. Present on behalf of the Appealing Party, Belle Park Hospital, was Laurence R. Mullen, Attorney at Law, member of the firm of Fulbright & Jaworski, Houston, Texas. The witnesses present at the beginning of hearing were as follows: Mary Carole Harrell, Deborah Gayle Placette, Allen L. Stark, M.D., Richard Newman, M. Ed., Joanne Schwartz, M.S.W., A.C.S.W., all of whom testified. Present throughout the hearing, but not testifying, were Thomas Martin, and Judy Parker. No one else was present.

The amount at issue at the beginning of the hearing was approximately $33,500.00, $27,500.00 in hospital charges and $6,000.00 in professional fees. During the hearing, the amount at issue became $54,248.76 in hospital charges, pursuant to the admission of Exhibit 45, subject to expected private insurance payment as an offset.

ISSUES

The general issues were as follows:

1. Whether entire period of inpatient psychiatric care was medically necessary and appropriate medical care?

2. Whether inpatient psychiatric care beyond 90 days was the appropriate level of care?

3. Whether the professional psychotherapy services in excess of five sessions per week can be cost-shared for crisis intervention?

4. Whether the professional psychotherapy services were

medically necessary and provided by an authorized provider?

During the hearing, an additional issue was developed, which was as follows:

5. Whether or not psychotherapy services provided by Belle Park Hospital and the independent provider constituted concurrent services, thereby precluding one or both from cost-sharing by CHAMPUS.

LAW AND REGULATIONS

The CHAMPUS Regulation which governs this Hearing is DoD Regulation 6010.8-R, dated January 10, 1977. (Hereinafter "Regulation.")

Chapter II of the Regulation consists of definitions used in the Regulation. Section B(14) defines Appropriate Medical Care, and reads as follows:

> "14. Appropriate Medical Care. "Appropriate Medical Care" means:
>
> a. That medical care where the medical services performed in the treatment of a disease or injury, or in connection with an obstetrical case, are in keeping with the generally acceptable norm for medical practice in the United States;
>
> b. The authorized individual professional provider rendering the medical care is qualified to perform such medical services by reason of his or her training and education and is licensed and/or certified by the state where the service is rendered or appropriate national organization or otherwise meets CHAMPUS standards; and
>
> c. The medical environment in which the medical services are performed is at the level adequate to provide the required medical care."

Section B(104) of Chapter II defines Medically Necessary,

and reads as follows:

"104. Medically Nec dically
Necessary" mea l of ser-
vices and supp is, fre-
quency, extent, s) adequate
for the diagno eatment of
illness or inj ding maternity
care). Medical ry includes
concept of app edical care."

Chapter IV discusse ogram Benefits. Section A(1)

deals with benefits in genera is as follows:

"A. General. The sic Program is es-
sentially a s l Program to the
Uniformed Ser ct medical care sys-
tem. In many ects, the Basic Pro-
gram is simil ate medical insurance
programs, and ed to provide finan-
cial assistan PUS beneficiaries for
certain presc al care obtained from
civilian sou:

1. Scope of b ubject to any and all
applicabl ns, conditions, limita-
tions, and ions specified or enu-
merated in lation, the CHAMPUS
Basic Prog ay for medically
necessary d supplies required in
the diagnc eatment of illness or
injury, in ternity care. Benefits
include sp dical services and sup-
plies prov igible beneficiaries
from autho lian sources such as
hospitals, horized institutional
providers, s and other authorized
individual nal providers as well
as profess lance service,
prescripti authorized medical sup-
plies and durable equipment."

Section B of Chapte es to Institutional Benefits.

Subsection B(1) defines insti enefits in general, and reads

as follows:

"B. Institutional

1. General. ay be extended for those
covered s d supplies described in
this Sect his CHAPTER IV, provided

by a hospital or other authorized institutional provider (as set forth in CHAPTER VI of this Regulation, "Authorized Providers"), when such services and supplies are ordered, directed and/or prescribed by a physician and provided in accordance with good medical practice and established standards of quality. Such benefits are subject to any and all applicable definitions, conditions, limitations, exceptions and/or exclusions as may be otherwise set forth in this or other CHAPTERS of this Regulation."

Subsection B(1)(g) of Chapter IV deals with the appropriate level required when inpatient care is at issue. The Regulation reads as follows:

"g. Inpatient: Appropriate Level Required. For purposes of inpatient care, the level of institutional care for which Basic Program benefits may be extended must be at the appropriate level required to provide the medically necessary treatment. If an appropriate lower level care facility would be adequate but is not available in the general locality, benefits may be continued in the higher level care facility but CHAMPUS institutional benefit payments shall be limited to the reasonable cost that would have been incurred in the appropriate lower level care facility, as determined by the Director, OCHAMPUS (or a designee). If it is determined that the institutional care can reasonably be provided in the home setting, no CHAMPUS institutional benefits are payable."

Chapter IV, §C(3)(i) deals with psychiatric procedure, and reads as follows:

"i. Psychiatric Procedures.

(1) Maximum Therapy Per Twenty-Four (24)-hour Period: Inpatient and Outpatient. Generally, CHAMPUS benefits are limited to no more than one (1) hour of individual and/or group psychotherapy in any twenty-four (24)-hour period, inpatient or outpatient. However, for the purpose of crisis intervention only, CHAMPUS benefits may be extended for up to two (2) hours of individual psychotherapy

during a twenty-four (24)-hour period.

(2) Psychotherapy: Inpatient. In addition, if individual or group psychotherapy, or a combination of both, is being rendered to an inpatient on an ongoing basis (i.e., non-crisis intervention), benefits are limited to no more than five (5) one-hour therapy sessions (in any combination of group and individual therapy sessions) in any seven (7) day period.

(3) Review and Evaluation: Outpatient. All outpatient psychotherapy (group or individual) are subject to review and evaluation at eight (8) session (visit) intervals. Such review and evaluation is automatic in every case at the initial eight (8) session (visit) interval and at the twenty-four (24) session (visit) interval (assuming benefits are approved up to twenty-four (24) sessions). More frequent review and evaluation may be required if indicated by the case. In any case where outpatient psychotherapy continues to be payable up to sixty (60) outpatient psychotherapy sessions, it must be referred to peer review before any additional benefits are payable. In addition, outpatient psychotherapy is generally limited to a maximum of two (2) sessions per week. Before benefits can be extended for more than two (2) outpatient psychotherapy sessions per week, peer review is required."

Section G of Chapter IV discusses Exclusions and Limitations. Subsection G(1) defines Exclusions and Limitations, and reads as follows:

"G. Exclusions and Limitations. In addition to any definitions, requirements, conditions and/or limitations enumerated and described in other CHAPTERS of this Regulation, the following are specifically excluded from the CHAMPUS Basic Program:

1. Not Medically Necessary. Services and supplies which are not medically necessary for the diagnosis and/or treatment of a covered illness or injury. ...

3. Institutional Level of Care. Services and supplies related to inpatient stays in hospitals or other authorized institutions above the appropriate level required to provide necessary medical care."

The Regulation defining generally accepted medical practice is found in Chapter IV(G)(15) as follows:

"15. Not in Accordance With Accepted Standards: Experimental. Services and supplies not provided in accordance with accepted professional medical standards; or related to essentially experimental procedures or treatment regimens."

The final Regulation that is applicable to the instant claim defines individual professional providers of care. Chapter VI, Section C sets forth the Regulation. (See Exhibit A, which by this reference is incorporated herein as if fully set forth for the Regulation.)

EVIDENCE CONSIDERED

The Hearing Officer has carefully considered all the testimony at the Hearing, the arguments made, and the documents described in the list of Exhibits attached to this Recommended Decision. In addition to the original 29 Exhibits listed on the Exhibit Index, Exhibit 29 having subsections A through R, Exhibits 30 through 58 have been received by the Hearing Officer and made a part of this record. Exhibit 30 is THE STATEMENT OF OCHAMPUS POSITION IN THE APPEAL OF 6 pages long. Exhibit 31 is the letter of transmittal dated September 30, 1983 whereby Exhibit 30 was made available to the undersigned Hearing Officer. Exhibit 32 is the original Notice of Hearing dated October 4, 1983, 4 pages long. Exhibit 33 is correspondence dated October 10, 1983 between

to the undersigned Hearing Officer, 3 pages long. Exhibit 34 is a letter with enclosures, authored by Joanne P. Hopkins, Fulbright & Jaworski, to the undersigned Hearing Officer, dated October 14, 1983, 2 pages long. Exhibit 35 is a Motion to Enter Appearance as an Appealing Party, filed by Fulbright & Jaworski on behalf of Belle Park Hospital, dated October 14, 1983, consisting of 3 pages. Exhibit 36 is a Motion for Continuance, filed by Appealing Party Belle Park Hospital, dated October 14, 1983, 5 pages long. Exhibit 37 is correspondence between and the undersigned Hearing Officer, dated October 17, 1983, 1 page long. Exhibit 38 is correspondence between the undersigned Hearing Officer and dated October 25, 1983, 1 page. Exhibit 39 is correspondence between the undersigned Hearing Officer and Joanne P. Hopkins, Fulbright & Jaworski, dated October 25, 1983, 1 page long. Exhibit 40 is correspondence between the undersigned Hearing Officer and , father of the Beneficiary, dated October 25, 1983 with enclsoure and envelope showing "REFUSED", 4 pages long. Exhibit 41 is correspondence between and the undersigned Hearing Officer, dated November 2, 1983, 1 page long. Exhibit 42 is the Amended Notice of Hearing, dated November 17, 1983, 4 pages long. Exhibit 43 is correspondence between the undersigned Hearing Officer and Joanne P. Hopkins and Lawrence P. Mullen, Fulbright & Jaworski, dated November 21, 1983, 1 page long. Exhibit 44 is a Statement of the Case, Witness List for Belle Park Hospital and Affidavit re: December 17, 1983 hearing, filed by Fulbright & Jaworski on behalf of Appealing Party Belle Park Hospital, received by the undersigned Hearing Officer November 30, 1983, 5 pages long. Exhibit 45 is an

Affidavit from Thomas Martin, Administrator, Belle Park Hospital, with enclosures referred to as Exhibit A, dated November 29, 1983, 10 pages long. Exhibit 46 is correspondence between Myrene McAninch, Ph.D. to A. Joyce Bossett, dated August 20, 1982 with enclosures, a total of 4 pages.

Several Exhibits were received at the hearing. Exhibit 47 is an additional statement of $760.00 with a claim form, 2 pages long. Exhibit 48 is vitas for the 3 Peer Review doctors, who opined in Exhibit 29P, 8 pages long. Exhibit 49 is a series of additional outpatient medical records, from the Fiscal Intermediary regarding

17 pages long. Exhibit 50 is claims and an explanation of benefits, Irvin A. Kraft, M.D., April 7, 1983 through July 7, 1983, 14 pages long. Exhibit 51 is a series of claims for services, with attached Explanation of Benefits, for the period between December 21, 1982 and April 29, 1983, 23 pages. Exhibit 52 is an article entitled "Guidelines for Psychiatrists in Consultative, Supervisory or Collaborative Relationships with Nonmedical Therapists", from the American Journal of Psychiatry, November, 1980, 3 pages long. Exhibit 53 is a letter authored by Melvin Sabshin, M.D., from the American Psychiatric Association to William Hough, dated November 14, 1983, 1 page long.

At the request of both parties at the close of the December 7, 1983 Hearing, the record was kept open until December 28, 1983 for the admission of additional Exhibits and responses or objections thereto. Accordingly, Exhibit 54 is a letter from William A. Hough, OCHAMPUS to the undersigned Hearing Officer concerning the additional issue of concurrent medical care with enclosure 1 and enclosure 2,

for a total of 4 pages. Exhibit 55 is a letter from Lawrence P. Mullen, Fulbright & Jaworski to the undersigned Hearing Officer, dated December 20, 1983, 1 page long. Exhibit 56 is a document entitled Summary of Argument of Belle Park Hospital and Objections to Consideration of Certain Items Offered as Evidence, undated, received by the undersigned Hearing Officer on December 21, 1983, 12 pages long. Exhibit 57 is a letter of transmittal, Belle Park Hospital to CHAMPUS, Madison, Wisconsin and Services and Supplies provided , from June 23, 1982 through April 22, 1983, consisting of 11 pages. The final Exhibit, Exhibit 58, is a letter from William A. Hough, OCHAMPUS, to the undersigned Hearing Officer dated December 27, 1983, 2 pages long.

SUMMARY OF EVIDENCE

Doctor and hospital bills were submitted to the Fiscal Intermediary and rejected for reasons set forth in the documentation, summarized as insufficient information to determine benefits, information not received, need treatment report or service frequency not covered. Also included in this Exhibit is a Nonavailability Statement issued by St. John's Hospital, Nassau Bay, Texas, regarding dated June 23, 1982. (Exhibit 1.)

Exhibit 2 is correspondence from Irvin A. Kraft, M.D., P.A., including an admission note, a treatment plan on OCHAMPUS Form 345a and other supporting documents. (Exhibit 2.)

Informal review from the Fiscal Intermediary, Wisconsin Physician Services, dated September 20, 1982, rejected some claims and authorized others. (Exhibit 4.)

A letter from to the Fiscal Intermediary, dated

September 30, 1982, requested an appeal of some of the initial decisions made by the Fiscal Intermediary. (Exhibit 6.)

The CHAMPUS Reconsideration Review Determination letter to is found as Exhibit 7. The letter is dated October 7, 1982, and includes a request for recoupment for two psychotherapy sessions.

A second Reconsideration Determination letter, dated October 7, 1982, was sent to . (Exhibit 8.)

requested First Level Appeal on November 5, 1982. (Exhibit 9.)

After several pieces of correspondence regarding request for additional information and supplying of same, a letter from CHAMPUS to dated February 21, 1983 indicated that some benefits were allowed, additional benefits were denied and contained a request for recoupment. (Exhibit 15.)

Exhibit 16 contains several pages of documentation regarding care and treatment, and status reports, regarding the Beneficiary.

Letters from Drs. Kraft and Stark were submitted to the Fiscal Intermediary attempting to explain some of the questions and discrepancies in the claims already filed. (Exhibits 17, 19.)

Exhibit 21 is an analysis of the claim authored by Alex Rodriguez, M.D., Medical Director, CHAMPUS. (Exhibit 21.)

By letter to CHAMPUS dated May 16, 1983, . provided additional information to CHAMPUS and requested resolution of the pending claims. (Exhibit 22.)

Formal review decision was authored June 20, 1983, and informed that the claims for cost-sharing could not be approved because care was not medically necessary, there was not an appropriate level of care and there was no crisis intervention

required. (Exhibit 23.)

Exhibit 24 contains several letters from including a Request for Hearing, giving and supplying additional background information in support of the claim.

Allen Stark, M.D., supplied CHAMPUS with additional information and justification for the claims and bills heretofore filed. (Exhibit 25.)

By letter dated July 26, 1983, CHAMPUS acknowledged receipt of the letter requesting a hearing. (Exhibit 26.)

Exhibit 29, consisting of subparts A through R are most of the hospital and medical records concerning the care and treatment of which give rise to the instant claim. (As they were considered, they will be discussed in the balance of this Recommended Decision.)

Exhibit 30 is the STATEMENT OF OCHAMPUS POSITION.

Documents and Notices of Appearance and the Motion to Enter an Appearance and the Motion for Continuance, all considered by the undersigned Hearing Officer, are in the file. (Exhibits 34, 35, 36.)

Exhibit 37 is a letter from requesting the continuance and agreeing to the appearance of Belle Park Hospital.

A statement of case, witness list, and Affidavit was filed and considered by the undersigned Hearing Officer on behalf of Belle Park Hospital. (Exhibit 44.)

Exhibit 45 is an Affidavit of Thomas Martin, Administrator, Belle Park Hospital regarding the costs incurred by the Beneficiary regarding her care and treatment at Belle Park Hospital.

Additional claims and explanations of requested claims were

received and considered. (Exhibit 47, 49, 50, and 51.)

Exhibit 52 is an article from the American Journal of Psychiatry explaining and clarifying guidelines when a psychiatrist works in a collaborative relationship with a nonmedical therapist.

A letter authored by Melvin Sabshin, M.D., of the American Psychiatric Association, regarding whether or not psychotherapy offered by an individual whose only academic qualifications are a Masters Degree in Education meeting the standards consistent with generally accepted norms of psychiatric practice in the United States was considered. (Exhibit 53.)

Post-hearing Exhibits, summarizing the issues raised and commenting on proposed Exhibits and objecting to Exhibits, were all considered by the undersigned Hearing Officer. (Exhibits 54, 55, 56, and 58.)

EVALUATION OF THE EVIDENCE

The undersigned Hearing Officer has carefully reviewed all the evidence and all the testimony. In addition, the undersigned Hearing Officer hereby overrules all pending objections with regard to the admission of proposed Exhibits, those objections reserved by the objecting party and made as a result of the submission of the additional Exhibits. Exhibits 1 through 58 are hereby made part of the record in this matter.

ISSUE #1: WHETHER THE ENTIRE PERIOD OF INPATIENT PSYCHIATRIC CARE WAS MEDICALLY NECESSARY AND APPROPRIATE MEDICAL CARE.

The applicable portions of the Regulation are Chapter 2, §B(14) and §B(104). Medically necessary, in summary form, means the level of service adequate for the treatment of the illness at issue.

That is, was the inpatient hospitalization at the combination of Alief General Hospital, Houston, Texas (Hereinafter "Alief") and Belle Park Hospital, Houston, Texas (Hereinafter "Belle Park") adequate to meet the treatment of the illness diagnosed with regard to - Appropriate medical care, incorported into the definition of medically necessary, requires that the medical care or services performed in treatment of an injury or disease must be in keeping with the generally acceptable norm for medical practice in the United States.

A brief examination of some of the testimony is in order to decide this issue. Joanne Schwartz, previously identified, testified that upon admission, . was a 12 year old acting like a 5 year old. She needed constant attention and structure. She was not responsible for her actions. She encouraged sexual activity, her impulses were out of control; she was forgetful; she stole; she admitted to setting fires prior to the admission into the hospital; she had a problem eating; she threatened suicide and continued to mention suicide; she was angry, she was hurt and rejected; and she threatened to kill her sister. Ms. Schwartz went on to testify that throughout the copiously documented medical treatment rendred at the two hospitals (Exhibit 29) made only moderate improvement. In fact, although it was clearly documented that . was discharged in accordance with medical advice, it was her personal opinion that was not ready for discharge in April of 1983. At time of discharge, according Ms. Schwartz, threatened to kill her sister if she went home. Nevertheless, for a variety of reasons, including financial considerations, the decision was made

to discharge as of April 29, 1983.

Two of teachers at the two hospitals testified. Mary Carol Harrell testified that she observed to require one-on-one attention; that she was disorganized; she was disobediant; she was inappropriate in her classroom language; she was disruptive; she had difficulty in completing her homework; and she was failing in her classwork. Throughout the time Ms. Harrell was the teacher, evidenced improvement in that she was better able to relate to her peers; nevertheless, Ms. Harrell still documented inconsistent behavior while she was an inpatient. The testimony of Deborah Placette is essentially the same, in that Ms. Placette testified about inconsistent behavior and academic work. In addition, Ms. Placette testified that had to be put on a point system, or a series of rewards, in order to accomplish goals set by the hospital and treating staff. As far as progress was concerned, Ms. Placette testified that did OK for some periods of time, she did make academic strides, but on the other hand she had many periods of regression and that she was very needy. At the time of discharge, was failing three out of her four academic courses.

Exhibit 29, especially Exhibit 29C, pages 79 through 81 also are important on the issue of appropriate medical care. This Exhibit, at the outset, indicated a one year treatment plan whereby would be an inpatient at Alief Hospital. [Apparently was transferred from Alief to Belle Park either because Alief ceased to exist or for reasons not terribly germane to this issue except that a continuity of inpatient treatment was provided.]

Also instructive is Exhibit 29P. The Fiscal Intermediary requested three Peer Reviews during treatment, and the three Peer Reviews are found as Exhibit 29P. Two of the three doctors responding in the Peer Review indicate that an approximate one year length of inpatient care would be appropriate and expected. For example, one doctor wrote as follows:

> "The length of in-patient stay is appropriate for the diagnosis since a patient with Conduct Disorder especially under socialized type often requires long term treatment." (Exhibit 29P, page 6.)

A second doctor, writing on January 17, 1983 opined as follows:

> "The length of inpatient stay is appropriate for the diagnosis and the treatment program. A long period of hospitalization is to be expected in such a case. While progress is clearly being made, it has been slowed due to the patient's particular problems and resistences." (Exhibit 29P, page 8.)

Exhibit 29Q is progress notes and medical information supplied by Belle Park. Although reviewed in summary fashion, this series of copious and detailed notes indicate the up-and-down progress made by during the time she was an inpatient at the two hospitals.

Exhibit 25 is a consultation report authored by Allen L. Stark, M.D., one of the members of the Irvin Kraft Group, on July 19, 1983. In it, Dr. Stark opines that intensive psychotherapy to be provided in an inpatient setting was the fastest and the safest means of dealing with who was described as a "very 'very' emotional fragile, potential dangerous girl." (Exhibit 25.)

ISSUE #2: WHETHER INPATIENT PSYCHIATRIC CARE BEYOND 90 DAYS WAS THE APPROPRIATE LEVEL OF CARE.

The Regulations applicable here, from Chapter IV, indicate

that the appropriate medical care would be that level of institutional care most appropriate to provide the medically necessary treatment. Joanne Schwartz, a member of the professional staff of Belle Park Hospital, testified that inpatient hospitalization indeed was the only appropriate care because residential treatment care (RTC) was unavailable in the Houston area and where it was available would not have been conducive to

because the availability of her family was part of the total treatment mileau.

Dr. Stark testified that was admitted to first Alief and then Belle Park because she was extremely disordered in her sense of self, she did not know who she was, and she thought she was someone that she depreciated. He further testified that

was reacting instead of acting, that her disorder at time of admission was extremely severe and life-long, and, finally, that she was in need of frequent psychotherapy.

Dr. Stark testified with regard to discharge that

no longer needed the very intense treatment she was receiving. She could have benefited from additional treatment, Dr. Stark testified, but on the other hand, it was not necessary beyond the admission date.

I have already analyzed Exhibit 29P, the three Peer Reviews requested by the Fiscal Intermediary, wherein two of the three doctors indicated, very clearly, that a long period of inpatient hospitalization was indicated by the diagnoses and observations of the Beneficiary.

In fact, the medical director of OCHAMPUS has offered a

report that in large part supports the fact of inpatient care beyond 90 days. Alex R. Rodriguez, M.D., authored a 3 page memorandum dated May 10, 1983. (Exhibit 21.) Therein, at the end of the paragraph at the top of page 2, Dr. Rodriguez opines that he would agree that psychiatric inpatient care would be justified beyond 90 days, and until the discharge date of April 29, 1983 "if the services were considered medically necessary."

I have already considered the evidence and the testimony regarding the issue of medically necessary and I will make a specific finding that indeed the medical care rendered was medically necessary. Therefore, given a finding of medically necessary, Dr. Rodriguez in Exhibit 21 supports inpatient care through the discharge date.

ISSUE #3: WHETHER THE PROFESSIONAL PSYCHOTHERAPY SERVICES IN EXCESS OF FIVE SESSIONS PER WEEK CAN BE COST-SHARED FOR CRISIS INTERVENTION.

The Regulation applicable hereto, Chapter IV, Section C(3)(i) dictates a negative answer to this question.

It cannot be contested that received psychotherapy, in combination of group and individual sessions, on an on-going basis from her admission into Alief General, June 23, 1982 through the date of her discharge from Belle Park, April 29, 1983. That is clearly an on-going series of psychotherapy sessions. Consequently, unless a crisis can be stretched to cover approximately 10 months, psychotherapy for five out of the seven days of the week is all that is mandated by the Regulation.

Perhaps some of the oral testimony should be examined. Dr.

Stark testified that he believed needed an acute level of care, and therefore needed intensive therapy, but an examination of his testimony, it is respectfully submitted, indicates that Dr. Stark never testified about a crisis situation. He used the words "critical level", "acute level", and "more than normal", but never used the word "crisis." Consequently, it appears from an evaluation of all the evidence, that no crisis existed and therefore psychotherapy sessions for only five out of a seven day period can be authorized.

ISSUE #4: WHETHER THE PROFESSIONAL PSYCHOTHERAPY SERVICES WERE MEDICALLY NECESSARY AND PROVIDED BY AN AUTHORIZED PROVIDER.

It appears that it is the CHAMPUS position that neither the psychotherapy provided by Richard Newman, M. Ed. nor the psychotherapy provided by Ms. Schwartz, an employee of Belle Park Hospital, can be cost-shared for various excluding reasons. I find that position against the weight of the evidence. The weight of the evidence, from all written and oral sources, indicates to the undersigned that indeed needed psychotherapy throughout her inpatient stay at the two hospitals. The question, therefore, seems to me as follows: Which of the two providers of care can be considered to be the authorized provider pursuant to the Regulation.

The Regulation itself, it is respectfully, lends support to the following analysis. Chapter IV §C(1) indicates that an individual professional provider can be individuals "who have formed professional corporations or associations qualifying as domestic corporations ... ." Local licensure is also a requirement.

It appears, therefore, that the professional corporation

formed by Irvin A. Kraft, M.D., can qualify as the individual professional provider. It is clear that Dr. Kraft practices medicine under a professional corporation just as the undersigned practices law as a professional corporation. The corporation, therefore, and not a particular individual was the individual professional provider in this claim.

As such, Richard Newman, M. Ed. can be considered as a representative and therefore an agent of the corporate individual professional provider. In the article from the American Journal of Psychiatry, admitted as Exhibit 52, there are several guidelines and criteria which explain and clarify the position of Richard Newman, M. Ed. and the Irvin Kraft Professional Corporation. In way of summary, as long as a psychiatrist supervises, consults and collaborates with the nonmedical therapist, that is an acceptable way of practicing psychiatric medicine. As long as the psychiatrist remains clinically responsible for the initial workup, diagnosis, the prescription of the treatment plan, and as long as the patient is aware of the collaboration, such a collaboration between a nondoctor therapist and the supervising psychiatrist is approved. The physican psychiatrist retains the primary medical responsibility, established by law and custom, for the admission, diagnosis, treatment, rehabilitation and discharge of patient. (Exhibit 52, page 2.)

The frequency of collaborations, consultations and supervision is also important and can vary, depending on the circumstances of each individual case. Nevertheless, the article goes on to point out that billings must clearly show the delineation of the distinction between the psychiatrist doctor and the nonmedical

therapist. (Exhibit 52.)

[As an aside, Regulation Chapter II(B)(104) was not listed in the CHAMPUS STATMENT OF POSITION as an applicable Regulation but, since it is applicable, I have considered it applicable and added it to the applicable Regulations.]

Based on all the evidence, I have concluded that the individual professional provider is the Kraft Professional Corporation, licensed in the State of Texas. Consequently, Irvin Kraft, M.D., is an agent and can be considered as a treating member of the individual professional provider professional corporation. So also, Allen Stark, M.D., based on the written evidence in the file and his testimony at the hearing is considered an agent of the professional corporation individual professional provider since contractual arrangements existed between Dr. Stark and the professional corporation whereby Dr. Stark provided administrative and attending physician duties along with duties involving the supervision of therapists.

Richard Newman, M.Ed., is also an agent of the profession corporation individual professional provider. Mr. Newman was licensed professionally as a counsellor by the State of Texas. He had a contract with the Kraft Professional Corporation to provide psychotherapy. Additionally, he testified that he was on the staff of Belle Park Hospital to provide psychotherapy and to provide family counseling. Consequently, not only does he have academic qualifications but staff privileges at the hospital; both of these facts indicate to me that Mr. Newman can also be considered an agent of the professional corporation individual professional provider.

Consequently, the psychiatric and psychotherapy care provided by the individual profession provider professional corporation, through its agents Drs. Kraft and Stark, and through the nonmedical therapist Richard Newman, all qualify as authorized medical care, and all were medically necessary, based on an evaluation of the totality of the evidence and the testimony.

An analysis is now necessary of the testimony of Ms. Joanne Schwartz. Ms. Schwartz was a professional member of the Belle Park Hospital staff. However, her testimony, when viewed in its totality, indicates that she provided the same kind of therapy that Mr. Newman was providing. She testified that she met with Richard Newman daily or almost daily with regard to the treatment of

. Her meetings with Richard Newman and Dr. Stark indicated to her that both Richard Newman and Dr. Stark were seeing She testified that Dr. Stark, as an agent of the professional corporation individual professional provider was at weekly staff meetings, was available as needed for consultation, and was very available. On the other hand, Ms. Schwartz testified that it is common practice to have two independent therapists, and made an attempt to distinguish the therapy she rendered from the therapy rendered by Richard Newman. I find her testimony in this regard unpursuasive as she did not make a logical and practical distinction between the medical care she was rendering and that rendered by Richard Newman. Ms. Schwartz also testified that in her opinion 99% of the patients at Belle Park Hospital had outside therapists or physicians who work with patients along with the hospital therapists. That testimony, it seems to the undersigned, supports

more so the proposition that the Kraft Professional Corporation was the individual professional provider.

Dr. Stark, during his testimony, testified regarding his knowledge of the relationship between Mr. Newman and He testifed that Mr. Newman spent more than 1 hour a day with He testified that Mr. Newman provided the psychotherapy under his, Dr. Stark's, supervision. Dr. Stark testified that he met with Mr. Newman on the average of 30 to 35 minutes a week discussing only the care and treatment of their mutual patient, Finally, Dr. Stark testifieo in unequivocal terms that Richard Newman, M.Ed., was the primary therapist.

As discussed earlier, the CHAMPUS Medical Director has written that he doubts whether or not the services provided to while an inpatient at Belle Park Hospital were medically necessary. (Exhibit 21.) The Regulation defines medically necessary as the level of services and supplies adequate for the diagnosis and treatment of an illness. (Chapter II, §B(104)). In view of the testimony of Dr. Stark, and that of Joanne Schwartz, teachers Harrell and Placette and Mrs. herself, it appears to me conclusively that the level of services provided by the Stark corporation was indeed the level of services adequate for the treatment of 's illness.

Consequently, it is my opinion that based on the evaluation of the applicable evidence, the Irvin A. Kraft, M.D., P.A.Professional Corporation must be considered the individual professional provider, to the exclusion of the attempted professional services rendered by Belle Park Hospital.

ISSUE #5: WHETHER OR NOT PSYCHOTHERAPY SERVICES PROVIDED BY BELLE PARK HOSPITAL AND THE INDIVIDUAL PROFESSIONAL PROVIDER CONSTITUTED CONCURRENT SERVICES, THEREBY PRECLUDING ONE OR BOTH FROM COST-SHARING BY CHAMPUS.

Based on the testimony at the hearing, it is my evaluation of the evidence that indeed there was provided to while she was an inpatient at the two hospitals concurrent medical care.

For example, the testimony from Dr. Stark has already been analyzed wherein it was his opinion that Richard Newman, M.Ed., was the primary therapist. Newman provided, in the words of Dr. Stark, psychoanalytical oriented therapy in a closed environment. I am not pursuaded by the testimony of Ms. Schwartz that she did anything different that Mr. Newman.

Based on one of the Exhibits, the evidence suggests that there can be only one treating therapist. (Exhibit 54.) On the other hand, Ms. Schwartz cannot be considered as the administrator or the administrative psychiatrist, because based on her own testimony she provided some of the individual psychotherapy for and consequently, did not function in an administrative role.

RATIONALE

After carefully considering all of the evidence and the testimony, the undersigned Hearing Officer is convinced that was indeed in need of inpatient psychiatric treatment, and psychotherapy as provided in an inpatient hospital setting. The period between June 1, 1982 and her admission into Alief General Hospital, it is my opinion the evidence and testimony suggests, was

perhaps a crisis, certainly in the mind of , mother of the Beneficiary. I believe indeed it was a crisis. Antisocial behavior had been recognized in , and was certainly justified based on the evidence in attempting to arrange for structured care and treatment of her daughter. There is ample testimony that care in a R.T.C. would have not produced the desired and indeed required care, supervision and treatment necessitated by . I believe the weight of the medical evidence, including two of the three Peer Reviews conducted by the Fiscal Intermediary, and the opinion of the Director of Medicine of OCHAMPUS was that more than 90 days was necessary as long as the care was medically necessary. I believe the evidence and testimony indicates that the care and treatment was medically necessary. I further believe that the professional corporation of Irvin Kraft, M.D., can be considered as the individual professional provider, thereby meeting the requirements of the Regulation. As such, agents of the professional corporation, including Drs. Kraft and Stark, and Richard Newman, M.Ed., supplied the level of services and care needed to treat the illness. It is evident from some of the Exhibits, particularly Exhibit 25, that by utilizing the nonmedical therapist, Richard Newman, the professional corporation individual professional provider provided to the medical care she needed at the most cost effective level. I further believe that the psychotherapy administered by the professional staff of Belle Park Hospital was cumulative and concurrent with the psychotherapy care provided by agents of the professional corporation and therefore cannot be considered as available to be cost-shared by CHAMPUS.

Nevertheless, I am not prepared to recommend authorization of the totality of the claims supplied by the Irvin A. Kraft, M.D., professional corporation. Based on the Exhibits and particularly Exhibit 53, the billing practices of the Irvin Kraft Professional Corporation are, to put it mildly, sloppy and misleading. There is no indication of which agent performed what services, which billing rate applied, and there is no indication of hours and times involved. Consequently, in finding No. 12 I am recommending that the individual professional provider be required to rebill, pursuant to the standards as set forth in Exhibit 53, and will recommend a cap on the statement to be cost-shared by CHAMPUS. Just as any professional should utilize nonprofessional support to produce for his or her clients or patients the best professional services at the most economical price, Dr. Kraft indeed utilized the theory but did not bill, certainly, on accepted procedures within the psychiatric community.

FINDINGS

The undersigned Hearing Officer makes the following findings of fact:

1. , age 13, was admitted to Alief General Hospital, Houston, Texas on June 23, 1982 with a primary diagnosis of Attention Deficit Disorder without Hyperactivity and a secondary diagnosis of conduct disorder, under socialized, non-agreessive type. She was transferred to Belle Park Hospital, Houston, and was finally discharged from Belle Park Hospital on April 29, 1983.

2. At the time of admission, she was receiving medical care from a medical corporation, Irvin A. Kraft, M.D., P.A., and was

actually being seen in combination by Dr. Kraft, a psychiatrist, and by Richard Newman, M.Ed. Richard Newman is a licensed professional counsellor by the State of Texas, is presently on the staff of Belle Park Hospital to provide psychotherapy and family counselling, and now is and was then under contract with the Kraft Group to provide service to it.

3. Allen L. Stark, M.D., is a psychiatrist licensed in the State of Texas who contracts with the Kraft Group to be the attending physician and to function as the administrative psychiatrist when the Kraft Group has a patient requiring hospitalization.

4. Throughout her inpatient admission at Alief General and Belle Park, was treated by the Kraft Group in individual, group and family group sessions. She also received medical care from members of the Belle Park professional staff, namely Joanne Schwartz, M.S.W., A.C.S.W. also attended school classes taught by members of Belle Park staff, Mary Carole Harrell and Deborah Gayle Placette.

5. In addition to the admitting diagnoses, was described by those who came in contact with her from June, 1982 through discharge from Belle Park on April 29, 1983 as needing one-on-one attention; disorganized; disobedient; using inappropriate classroom language; disruptive; failing in classwork; being bright in math with many periods of regression; being very needy; being suicidal (especially at and before admission); a 12 year old acting like a 5 year old; requiring constant attention and structure; not responsible for her actions; encouraging sexual activity; impulses

services provided by Belle Park Hospital were similar in description to those provided by the Kraft Group, that the need for two psychotherapists was not proven by the weight of the evidence, and that Belle Park provided concurrent medical care and thus is precluded from CHAMPUS cost-sharing.

10. I find that inpatient psychiatric care beyond 90 days was the appropriate level of care, pursuant to the Regulation, Chapter IV, §B(1)(g) and G(3).

11. Based on the evidence and testimony, I find no basis for considering the individual or group psychotherapy provided crisis intervention, between the dates of her admission into Alief General Hospital until discharge, thereby barring CHAMPUS cost-sharing for more than 5 sessions per week, group or individual sessions, between June 23, 1982 and April 29, 1983 pursuant to the Regulation, Chapter IV, §C(3)(i).

12. I find that the Kraft Group, Irvin A. Kraft, M.D., P.A., to be the individual professional provider of care in this claim, pursuant to the Regulation, Chapter IV, §C. All claims for professional services rendered by Irvin Kraft, M.D., Allen Stark, M.D. and Richard Newman, M.Ed., between June 1, 1982 and April 29, 1983, are thus recommended for CHAMPUS cost-sharing; provided, however, that the individual professional provider of care, Irvin A. Kraft, M.D., P.A. resubmit a revised claim on its billhead. The revised billing should note (1) the name of the Group member or members actually providing the service; (2) his training (e.g., M.D. or M.Ed.); (3) the number of visits; (4) the rate per visit; (5) the total charges. The revised billing must also bill for no

more than five (5) one-hour therapy sessions in any combination of group and individual therapy sessions in any seven (7) day period, between June 23, 1982 and April 29, 1983, and may bill the usual and customary rates for crisis intervention for the care rendered between June 1, 1982 and June 22, 1982. Finally, I find that the revised billing for June 1, 1982 through April 29, 1983 cannot exceed the amount of $120.00 per day based on the testimony at the hearing. Therefore, I find the maximum possible revised billing from the Kraft Group to be $28,578.00.

RECOMMENDED DECISION

It is the recommendation of the undersigned Hearing Officer that the claim of Belle Park Hospital in the amount of $42,483.76 be cost-shared by CHAMPUS; that a claim be resubmitted by the professional corporation known as Irvin A. Kraft, M.D., P.A. for professional psychotherapy services as set forth in Finding No. 12 in an amount not to exceed $28,578.00 which amount also be cost-shared by CHAMPUS; that the claim of Belle Park Hospital in the amount of $12,585.00 for professional services and for $240.00 for intensive cardiac continue to be rejected for cost-sharing by CHAMPUS.

DATED this 23 day of January, 1984.

Sherman R. Bendalin
CHAMPUS Hearing Officer

NOTE: **Specialized treatment facilities (STF's) also include those facilities which seek approval to provide care authorized under the Program for the Handicapped. (Refer to CHAPTER V of this Regulation, "Program for the Handicapped.")**

C. Individual Professional Providers of Care

1. General. Individual professional providers of care are those providers who bill for their services on a fee-for-service basis and are not employed or contracted with by an institutional provider. This category also includes those individuals who have formed professional corporations or associations qualifying as a domestic corporation under Section 301.7701-5 of the Federal Income Tax Regulations. Such individual professional providers must be licensed by the local licensing agency for the jurisdiction in which the care is provided; or in the absence of licensure be certified by or be eligible for membership in the appropriate national or professional association which sets standards for the profession of which the provider is a member. Services provided must be in accordance with good medical practice and prevailing standards of quality of care and within recognized utilization norms.

   a. Licensing Required: Scope of License. Otherwise covered services shall be cost-shared only if the individual professional provider holds a current, valid license to practice his or her profession (or otherwise is legally authorized to practice) required in the jurisdiction where the service is rendered. Further such service must be within the scope of the license (or other legal authorization).

   b. Monitoring Required. The Director, OCHAMPUS (or a designee), is responsible for developing appropriate monitoring programs and issuing guidelines, criteria and/or norms necessary to insure that Program expenditures are limited to necessary medical supplies and services at the most reasonable cost to the Government and beneficiary. The Director, OCHAMPUS (or a designee), will also take such steps as necessary to deter overutilization of services.

   c. Christian Science. Christian Science Practitioners and Christian Science Nurses are recognized by public law to provide services under CHAMPUS. Inasmuch as they provide services of an extramedical nature, the general criteria outlined above do not apply to Christian Science Services. (Refer to Subparagraph C.3.d.(2) of this CHAPTER VI regarding Services of Christian Science Practitioners and Nurses.)

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2. Interns and Residents. Interns and Residents may not be paid directly by CHAMPUS for services rendered to a beneficiary when their services are provided as part of their employment (either salaried or contractual) by a hospital or other institutional provider.

3. Types of Providers. Subject to the standards of participation provisions of this Regulation, the following individual professional providers of medical care are authorized to provide services to CHAMPUS beneficiaries:

a. Physicians.

(1) Doctors of Medicine (M.D.).

(2) Doctors of Osteopathy (D.O.).

b. Dentists. Except for covered oral surgery as specified in Section E of CHAPTER IV of this Regulation, "Basic Program Benefits," all otherwise covered services rendered by dentists require preauthorization.

(1) Doctors of Dental Medicine (D.M.D.).

(2) Doctors of Dental Surgery (D.D.S.).

c. Other Allied Health Professions. The services of the following individual professional providers of care are coverable on a fee-for-service basis providing such services are otherwise authorized in this or other CHAPTERS of this Regulation.

(1) Clinical Psychologists. A clinical psychologist may provide therapy independent of physician referral and supervision. However, in order to provide therapy a clinical psychologist must either:

(a) Be licensed or certified by the jurisdiction in which practicing, have a doctoral degree in clinical psychology and a minimum of two years of supervised experience in clinical psychology in a licensed hospital, a mental health center, or other appropriate clinical setting as determined by the Director, OCHAMPUS (or a designee), or

(b) Be listed in the National Register of Health Service Providers in Psychology, compiled and published by the Council of the National Register of Health Services Providers in Psychology.

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(2) Doctors of Optometry.

(3) Doctors of Podiatry or Surgical Chiropody.

(4) Certified Nurse Midwives

(a) A certified nurse midwife may provide covered care independent of physician referral and supervision, provided the nurse midwife:

1 Is licensed, when required, by the local licensing agency for the jurisdiction in which the care is provided; and

2 Is certified by the American College of Nurse Midwives. To receive certification, a candidate must be a registered nurse who has successfully completed an educational program approved by the American College of Nurse Midwives, and passed the American College of Nurse Midwives National Certification Examination.

(b) The services of a registered nurse who is not a certified nurse midwife may be authorized only where the patient has been referred for care by a licensed physician and a licensed physician provides continuing supervision of the course of the care. A lay midwife who is neither a certified nurse midwife nor a registered nurse is not a CHAMPUS authorized provider, regardless of whether the services rendered might otherwise be covered.

(5) Other Individual Paramedical Providers. The services of the following individual professional providers of care, in order to be considered for benefits on a fee-for-service basis, may be provided only if the beneficiary/patient is referred by a physician for the treatment of a medically-diagnosed condition and a physician must also provide continuing and ongoing oversight and supervision of the program or episode of treatment provided by these individual paramedical providers.

(a) Licensed Registered Nurses.

(b) Licensed Practical or Vocational Nurses.

(c) Licensed Registered Physical Therapists.

(d) Psychiatric and/or Clinical Social Workers.

(e) Audiologists.

(f) Speech therapists (speech pathologists).

d. Extramedical Individual Providers. Extramedical individual providers are individuals who do counseling or nonmedical therapy and whose training and therapeutic concepts are outside the medical field.

(1) Marriage and Family Counselors. The services of certain extramedical marriage and family counselors are coverable on a fee-for-service basis, under the following specified conditions.

(a) The CHAMPUS beneficiary must be referred for counseling by a physician.

(b) A physician is providing ongoing oversight and supervision of the counseling services being provided.

(c) The marriage and family counselor must certify on each claim for reimbursement that a written communication has been made or will be made to the referring physician of the results of the treatment. Such communications will be made at the

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end of the treatment or more frequently if required by the referring physician. (Refer to CHAPTER VII of this Regulation, "Claims Submission, Review and Payment.")

(d) The counselor must have the following:

i. Recognized graduate professional education with the minimum of an earned master's degree from an accredited educational institution in an appropriate behavioral science field, mental health discipline.

ii. The following experience:

(i) Either 200 hours of approved supervision of the practice of marriage and family counseling, ordinarily to be completed in a 2-3 year period, of which at least 100 hours must be in individual supervision. This supervision will occur preferable with more than one supervisor, and should include a continuous process of supervision with at least three cases, and

(ii) 1000 hours of clinical experience in the practice of marriage and family counseling under approved supervision, involving at least 50 different cases; or

(iii) 150 hours of approved supervision of the practice of psychotherapy, ordinarily to be completed in a 2-3 year period, of which at least 50 hours must be individual supervision. Plus: At least 50 hours of approved individual supervision of the practice of marriage and family counseling, ordinarily to be completed within a period of not less than one nor more than two years, and

(iv) 750 hours of clinical experience in the practice of psychotherapy under approved supervision involving at least 30 cases. Plus: At least 250 hours of clinical practice of marriage and family counseling under approved supervision, involving at least 20 cases; plus,

iii. Possession of a valid state license or certificate as a marriage and family counselor or hold a license or certificate that allows the individual to provide marriage and family counseling in states which require such licensing or certification.

(2) Christian Science Practitioners and Christian Science Nurses. Public Law 89-614 specifically provides authority for CHAMPUS to cost-share the services of Christian Science practitioners and nurses. In order to bill as such individuals must be listed or be eligible for listing in the Christian Science Journal at the time the service is provided. These services are covered with the following caveat:

> Inasmuch as the Christian Science method of healing is not medical treatment the language of the Defense Appropriation Acts of 1976 (Section 751(f)) and 1977 (Section 743(f)) limited CHAMPUS coverage to those services and supplies which are "medically or psychologically necessary to diagnose and treat a mental or physical illness, injury, or bodily malfunction as diagnosed by a physician, dentist or a clinical psychologist," Christina Science practitioners and nurses cannot be paid by CHAMPUS during FY 1976 or FY 1977. Coverage in following fiscal years will be dependent upon the language of the Appropriations Act covering that given year's appropriations.

D. Other Providers. Certain medical supplies and services of an ancillary or supplemental nature are coverable by CHAMPUS subject to certain controls. This category of provider includes the following:

1. Independent Laboratory. Laboratory services of independent laboratories may be cost-shared if the laboratory is approved for participation under Medicare and certified by the Social Security Administration.

2. Suppliers of Portable X-Ray Services. Such suppliers must meet the conditions of coverage of the Medicare Program, set forth in 20 CFR 405.1411 through 1416 (as amended) or the Medicaid Program in that state in which the covered service is provided.

3. Pharmacies. Pharmacies must meet the applicable requirements of state law in the state in which the pharmacy is located.

Exhibit 4
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