



RESTRICTIONS REMAIN ON POWER WHEELCHAIRS AND OTHER ASSISTIVE DEVICES CMS Seeks Comments on Proposed National Coverage Decision

On February 3, 2005, CMS, based on the recommendations of its Interagency Wheelchair Work Group (IWWG), issued a draft National Coverage Decision (NCD) memorandum on mobility assistive equipment (MAE), such as power-operated wheelchairs or scooters. (See also [CMA Weekly Alert Extra of 12/17/04](#)). The draft NCD offers some improvements for coverage determination, but leaves one key restriction in place. The draft NCD correctly moves away from the past standard that one had to be “bed or chair confined”, and proposes considering a beneficiary’s mobility deficits and needs in the prescribing of MAE. However, the draft NCD continues the restrictive criteria that MAE is only for “use in the home.” It leaves the beneficiary in the paradox of mobility in the home setting but nowhere else.

The IWWG determined that MAE is reasonable and necessary in accordance with the Medicare statute. (See, §1862(a)(1)(A) of the Social Security Act, 42 U.S.C. §1395y(a)(1)(A). Once this was determined, the IWWG developed an assessment and intervention process that it felt would improve the net health outcomes for patients, including an examination of studies and expert opinion that address the effect of MAE on the ability to perform mobility-related activities of daily living (MRADLs). The IWWG set forth new functional and clinical criteria to be considered in wheelchair prescribing; the clinical criteria to be considered sequentially. The draft NCD, and full list of criteria, are available at <http://www.cms.hhs.gov/mcd/viewdraftdecisionmemo.asp?id=143>, and can be reached from the main CMS website, www.cms.hhs.gov.

While these clarifications and new emphasis on clinical evaluation are improvements, problems arise with the all-too frequent use of the phrase “for use in the home” in the criteria. The IWWG notes that the language in question is part of the Medicare statutory coverage criteria. Accordingly, it takes the position that the national coverage determinations process is not the appropriate place to modify statutory coverage criteria.

This approach ignores the reality that Medicare beneficiaries live, work, and interact in a variety of settings, including the home and the larger community. Further, advocates consider the draft NCD memo to be in conflict with the broad public policy objective of promoting functional independence and community integration. In particular, the draft NCD memo conflicts with the Americans with Disabilities Act (ADA), the Olmstead v. L.C. ex rel. Zimring decision prohibiting unjustified institutional isolation of person with disabilities. (527 U.S. 581, 600 (1999)), the President’s “New Freedom Initiative,” and

the Ticket to Work and Work Incentives and Improvement Act (TWIIA)(Pub. L. 106-170). (For a broader discussion of these concerns, see the website of the ITEM Coalition, www.itemcoalition.org.)

Advocates had hoped for a more expansive reading of the current statutory language, particularly in light of the agency's proposed focus on a function-based determination of mobility limitations based on mobility-related activities of daily living. This is because the original intent of the "in the home" language was to define DME as equipment used outside institutions such as a hospital or a skilled nursing facility and thus make clear that reimbursement for DME outside these settings is available only under Medicare's Supplemental Medicare Insurance Program (Medicare Part B). A related problem exists for persons residing in nursing facilities, which supply only standard manual wheelchairs. Because CMS interprets the "in the home" requirement restrictively, people are unable to go outside nursing facility system to get custom or power wheelchairs. This issue will be discussed in a separate *CMA Weekly Alert*.

Solutions proposed for the "in the home" issue include:

1. Ask CMS to expand its coverage criteria for MAE such that Medicare beneficiaries with mobility deficits, and those who otherwise qualify for MAE, are not penalized for using MAE in the community and elsewhere;
2. Request that CMS issue program guidance memoranda for durable medical equipment regional carriers (DMERCs) and others explaining the application of the regulatory clarification;
3. Seek Congressional clarification, either in the statute or other direction to CMS, to make clear that the "in the home" limitation does not apply to persons who otherwise meet the DME requirements for Mobility Assisted Devices.

CMS has requested comments on the draft NDC memo, pursuant to Section 731 of the Medicare Modernization Act (MMA), Pub. L. 108-173 (December 8, 2003). The comment period ends March 7, 2005. The draft is available at <http://www.cms.hhs.gov/mcd/viewdraftdecisionmemo.asp?id=143>, reachable through the main CMS page, www.cms.hhs.gov.) Instructions for submitting comments can be found at <http://www.cms.hhs.gov/coverage/8h.asp>. The CMS contact-persons on this issue are Shamiram Feinglass, MD, MPH, sfeinglass@cms.hhs.gov , 1-410-786-9262, and Elizabeth Truong, etruong@cms.hhs.gov , 1-410-786-6005.

For further discussion of access to mobility assistive equipment, the "for use in the home" limitation, and the National Coverage Decision process, contact Sally Hart, Esq., shart@acdl.com, in the Center's Tucson, AZ office, or contact Vicki Gottlich, Esq., vgottlich@medicareadvocacy.org, or Alfred Chiplin, Esq., achiplin@medicareadvocacy.org, in the Center's Washington, DC office.