



*Independence Through
Enhancement of
Medicare and Medicaid*
COALITION

January 23, 2004

VIA FEDERAL EXPRESS AND FACSIMILE

The Honorable Tommy G. Thompson
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Re: Power Wheelchairs and POVs – Medicare Coverage Policy Clarification

Dear Secretary Thompson:

This letter is sent on behalf of a national, consumer-led coalition known as the “ITEM” Coalition, which is an acronym for Independence Through Enhancement of Medicare and Medicaid. The ITEM Coalition was formed in 2003, and its over 70 member organizations include a diverse set of disability organizations, aging organizations, other consumer groups, labor organizations, voluntary health associations, and non-profit provider associations. The ITEM Coalition’s purpose is to raise awareness and build support for policies that will improve access to assistive devices, technologies and related services for people of all ages with disabilities and chronic conditions. From coverage for hearing aids to augmentative communication devices (AACs), from advanced artificial limbs to screen readers for people with vision impairments, the Coalition’s mission is a broad one with implications for virtually every person with a disability who relies on assistive devices to be healthy, functional and independent.

The ITEM Coalition writes today to express our concern over the implementation of “Power Wheelchairs and POVs – Policy Clarification and Medical Review Strategy” (the “Policy”) issued last month to address two points of the 10-point initiative released by Centers for Medicare and Medicaid Services (“CMS”) and the Office of the Inspector General (“OIG”) on September 9, 2003. The Coalition recognizes the importance of the federal government’s efforts to combat fraud and abuse in the purchase of manual wheelchairs, power wheelchairs and power operated vehicles (“POVs”) under Medicare’s durable medical equipment benefit, as scarce resources are needed to promote beneficiary access to much-needed rehabilitation equipment and assistive devices.

However, we urge your caution and discretion in enforcing the Policy in order to prevent unintended consequences and inappropriate denials of legitimate claims. We are concerned that well-meaning efforts to root out fraud and abuse may lead to coverage denials or significant

delays in obtaining necessary medical equipment even in cases where ample documentation supporting the need for power mobility devices exists.

The Policy states that if a patient “is able to walk either without any assistance or with the assistance of an ambulatory aid, such as a walker, the power wheelchair is denied as not medically necessary.” The language sets a bright line rule that threatens the health and mobility of the many Americans who can rely on walkers or canes for traveling a short distance, but require power mobility devices to be able to live healthy, safe lives. The Coalition believes that the lack of flexibility in assessing whether a power mobility device is truly medically necessary, while a good-intentioned effort to eliminate fraud and abuse, risks too much for the health and welfare of beneficiaries.

To be sure, the Medicare regulations do refer to the terms “bed or chair confined” in the context of wheelchair coverage policy. In our view, these terms are antiquated and should have been revised years ago. Throughout the past seven or eight years, CMS implicitly modified this language by covering wheelchairs if the patient needed one to perform activities of daily living within the confines of the home. This permitted beneficiaries who were truly in need of a mobility device to access one even though they could not technically meet the antiquated standard (e.g., people with severe cardio-pulmonary disease or people with conditions such as Multiple Sclerosis which have symptoms that wax and wane).

This is supported by the fact that the current certificate of medical necessity (“CMN”) for wheelchairs—also used during the past seven or eight years—did not ask whether the patient is “bed or chair confined,” but rather whether the patient “require[s] and use[s] a wheelchair to move around in their residence.” It is our profound concern that this CMS clarification returns Medicare coverage policy to the letter of the antiquated regulatory standard and will result in the wholesale denial of wheeled mobility to significant numbers of Medicare beneficiaries who have a legitimate need for such devices.

Whether this change in policy constitutes a “clarification” or a substantive change in policy is at least an arguable point. In the normal course, a change in Medicare policy with the magnitude of impact that this change brings would be subject to public notice and comment before being implemented. But this clarification was simply printed in the DMERC bulletin to providers without any procedural safeguards. The policy also applies retroactively, which even the new Medicare law prohibits, and could result in retroactive denials of wheelchairs to beneficiaries who have become accustomed to the enhanced mobility that these devices provide.

We would also like to stress that the increase of Medicare payments for power wheelchairs over the past few years has many causes, of which potentially fraudulent claims is only one. There has been an expansion in public awareness of the medical necessity and accessibility of power wheelchairs by beneficiaries during this time period. In addition, federal law has been established (i.e., the Ticket to Work law) that extends Medicare coverage to SSDI beneficiaries when, in contrast to the in-the-home requirement, they leave their homes and return to work. If Medicare has increased its expenditures for wheelchairs in these legitimate instances, where fraud and abuse is not an issue, then we encourage this investment in the disability population

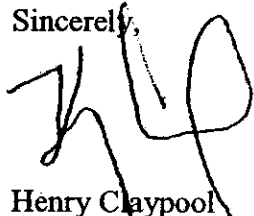
and applaud CMS for its role in maximizing independent living and full functioning of its beneficiaries.

To prevent unintended harm to beneficiaries, ***we urge you to rescind the wheelchair policy clarification and, in the alternative, issue a proposed policy that seeks public comment.*** The members of the ITEM Coalition stand ready to work with you and CMS in crafting a more reasonable coverage policy which should include, at a minimum, authority for the DMERCs to exercise discretion and some degree of flexibility in determining who is eligible to receive a manual or power wheelchair (or POV). Without this flexibility, Medicare beneficiaries with disabilities and chronic conditions will be at risk of inappropriate denials of Medicare benefits. In addition, we urge you and CMS to closely monitor and study the impact that the Policy Clarification is having on legitimate beneficiary access to manual and power mobility devices.

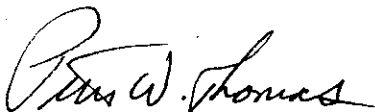
We would like to meet with you at your earliest convenience to discuss this important issue in more depth. Please contact Henry Claypool or Peter Thomas at 202-466-6550 to schedule a convenient date and time.

Thank you for your initiative to reduce fraudulent claims under the Medicare power wheelchair benefit. Every dollar saved on fraudulent and abusive activity can be devoted to meeting existing and future needs of beneficiaries with disabilities and chronic conditions.

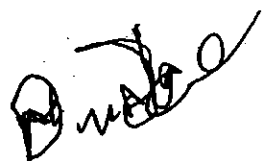
Sincerely,



Henry Claypool
Advancing Independence: Modernizing
Medicare and Medicaid
ITEM Coalition Steering Committee Member



Peter W. Thomas
Consortium for Citizens with Disabilities
Health Task Force
ITEM Coalition Steering Committee Member



Paul W. Schroeder
American Foundation for the Blind
ITEM Coalition Steering Committee Member



Lee Page
Paralyzed Veterans of America
ITEM Coalition Steering Committee Member

Cc: Dennis Smith, Acting Administrator, CMS
Dara Corrigan, Acting Principal Deputy Inspector General, HHS

Attachment: List of ITEM Coalition Members