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SUBMITTED ELECTRONICALLY (PMDRECON@NORIDIAN.COM)

Smitha M. Ballyamanda, MD, CAQSM
Medical Director
DME MAC, Jurisdiction A
Noridian, LLC
PO Box 6742
Fargo, ND | 58108

Sunil V. Lalla, MD, FACS, CPC
Chief Medical Officer
DME MAC, Jurisdiction B
CGS Administrators
26 Century Blvd., Ste. ST610
Nashville, TN | 37214

Robert D. Hoover, MD, MPH, FACP
Chief Medical Officer
DME MAC, Jurisdiction C
CGS Administrators
26 Century Blvd., Ste. ST610
Nashville, TN | 37214

Angela S. Jenny, DO, DABFM
Medical Director
DME MAC, Jurisdiction D
Noridian, LLC
PO Box 6742
Fargo, ND | 58108

RE: ITEM Coalition's Public Comment for Proposed LCD – Power Mobility Devices (DL33789)

Dear Drs. Ballyamanda, Lalla, Hoover and Jenny:

On behalf of the undersigned members of the Independence Through Enhancement of Medicare and Medicaid (“ITEM”) Coalition, we write in strong opposition to the proposed revisions to the Local Coverage Determination (“LCD”) DL33789, which would restrict Medicare coverage for certain power mobility devices, specifically, Group 2 standard power wheelchairs with seat elevation systems but without complex rehabilitative technology (“CRT”) capability. If finalized, this restriction in access to these critical devices would negatively impact Medicare beneficiaries who rely on such features to reach, transfer, and perform or participate in Mobility Related Activities of Daily Living (“MRADLs”) in their homes, which is the standard for coverage under the power wheelchair and seat elevation National Coverage Determinations.¹

The ITEM Coalition opposes these proposed changes and urges the Durable Medical Equipment Medicare Administrative Contractors (“DME MACs”) to reconsider and withdraw this proposed non-coverage decision as soon as possible. We also encourage the

¹ Centers for Medicare & Medicaid Services, *National Coverage Analysis for Mobility Assistive Equipment (MAE)*, Decision Memo (NCA ID 000143) (May 5, 2005), available at <https://www.cms.gov/medicare-coverage-database/view/ncacal-decision-memo.aspx?NCAId=143>; Centers for Medicare & Medicaid Services, *National Coverage Determination for Seat Elevation Equipment (Power Operated) on Power Wheelchairs (280.16)*, Pub. 100-03, May 16, 2023), available at <https://www.cms.gov/medicare-coverage-database/view/ncd.aspx?ncdid=376>.

DME MACs to reinstate case-by-case review of seat elevation claims while they work in collaboration with disability stakeholders, including beneficiaries, clinicians, and rehabilitation technology experts, to develop an affirmative coverage policy for seat elevation in Group 2 power wheelchairs without CRT that is consistent with the expansive interpretation and intent of the May 2023 National Coverage Decision (“NCD”) and National Coverage Analysis (“NCA”) on seat elevation.

The ITEM Coalition is a national consumer- and clinician-led coalition advocating for access to and coverage of assistive devices, technologies, and related services for persons with injuries, illnesses, disabilities, and chronic conditions of all ages. Our members represent individuals with a wide range of disabling conditions, as well as the providers who serve them, including mobility impairment, limb loss and limb difference, multiple sclerosis, spinal cord injury, brain injury, stroke, paralysis, cerebral palsy, spina bifida, hearing, speech, and visual impairments, myositis, and other life-altering conditions.

We are deeply concerned that the proposed LCD would categorically determine that seat elevation systems in Group 2 standard power wheelchairs are not “reasonable and necessary” under the Medicare statute² and related coverage policies. This impacts individuals with limb loss, pressure ulcers, COPD, congestive heart disease, myositis, rheumatoid arthritis, and other disabling conditions who require wheeled mobility in the home. If finalized, this policy would represent a significant step backward in Medicare’s recognition of the functional and medical necessity of modern mobility technology.

The ITEM Coalition has been directly engaged in Medicare coverage policy on seat elevation systems for power wheelchairs for many years. In fact, we were the original submitter of the National Coverage Determination Reconsideration Request that ultimately led the Centers for Medicare and Medicaid Services (“CMS”) to reexamine longstanding limitations on coverage for seat elevation systems. Following extensive stakeholder engagement, public comment, and evidence review, CMS issued its final NCD and related NCA in May 2023 expanding Medicare coverage of seat elevation systems to beneficiaries who use Group 2, 3, and 5 power wheelchairs when clinical criteria are met. That decision was widely celebrated by the disability community and recognized as a landmark policy correction that aligned Medicare coverage with contemporary rehabilitation standards and the functional realities of beneficiaries with mobility impairments.

With respect to seat elevation systems in non-CRT, power wheelchairs, CMS gave discretion to the DME MACs to assess coverage of seat elevation in Group 2 standard power wheelchairs on a case-by-case basis. The National Coverage Analysis stated the following:

There are also Medicare-covered power wheelchairs that are not designated complex rehabilitative power-driven wheelchairs....DME MACs will have discretion to determine reasonable and necessary coverage of power seat elevation equipment for individuals who use Medicare-covered PWCs other than complex rehabilitative power-driven wheelchairs. **This allows for individualized decision making based on the unique**

² 42 U.S.C. § 1395y(a)(1)(A)

characteristics of each individual who requests power seat elevation equipment on a claim-by-claim basis.³

The proposed LCD eliminates this directive and replaces case-by-case review based on individualized decision making with a categorical bar of coverage for certain Medicare beneficiaries who do not qualify for a Group 3 power wheelchair but still have a need for seat elevation in their homes. We, therefore, view the proposed LCD as contradictory to the NCA and related NCD.

The proposed LCD represents a troubling retrenchment of the progress made on the issue of seat elevation coverage and represents a substantive departure from settled national coverage policy. By determining that non-CRT, Group 2 power wheelchairs equipped with seat elevation systems are not reasonable and necessary, the DME MACs would effectively narrow the practical availability of coverage that CMS explicitly expanded after a rigorous national reconsideration process. The ITEM Coalition, and the beneficiary and clinician communities it represents, invested years of work in compiling evidence, submitting data, participating in CMS review, and engaging in good-faith dialogue to secure the coverage expansion announced in May 2023. Reversing course now through local coverage policy would undermine the stability and predictability that exists with Medicare coverage determinations and erode stakeholder confidence in the durability of final national policy decisions.

While we recognize the DME MAC's authority to issue LCDs and the discretion—*on a case-by-case basis*—they were granted by CMS in the seat elevation NCA, that authority should not be exercised in a manner that functionally negates the intent and effect of a recently finalized national coverage expansion. The 2023 final decision reflected CMS's considered judgment that seat elevation is considered durable medical equipment (in that it serves a medical purpose) and is medically necessary for appropriate beneficiaries using Group 2 and higher power wheelchairs. We believe that a local coverage determination that singles out certain Group 2 power wheelchair users and creates a blanket seat elevation coverage denial for that group is inconsistent with both the letter and the intent of that national policy.

The final NCD on seat elevation reversed CMS's long-standing position that seat elevation systems were convenience or "luxury" items. For many Medicare beneficiaries, they are integral to performing MRADLs, facilitating safe transfers, enhancing reach, reducing caregiver burden, and preventing secondary complications. Clinical evidence and functional assessments demonstrate that seat elevation enables safe lateral transfers to beds, toilets, and other surfaces; reduces risk of falls and associated injuries; decreases upper extremity strain and overuse injuries; promotes independence in the home environment; and decreases the likelihood of caregiver lifting injuries. By denying coverage for seat elevation systems on Group 2 standard power wheelchairs, the proposed LCD would disproportionately affect beneficiaries who require these features to perform or participate in activities that require the beneficiary to reach as well as perform MRADLs—the key standard Medicare applies when evaluating durable medical equipment ("DME") coverage.

³ Centers for Medicare & Medicaid Services, *National Coverage Determination for Seat Elevation Equipment (Power Operated) on Power Wheelchairs (280.16)*, Pub. 100-03, May 16, 2023), available at <https://www.cms.gov/medicare-coverage-database/view/ncd.aspx?ncdid=376>.

The proposed LCD is also inconsistent with Medicare’s “reasonable and necessary” standard.⁴ The Medicare statute does not require restoration of full function or curative effect; rather, an item must be reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a “malformed body member.”⁵ For beneficiaries with neuromuscular disorders, spinal cord injury, multiple sclerosis, limb loss, advanced arthritis, or other progressive conditions, seat elevation systems directly improve functional capacity by enabling performance of essential activities within the home and reducing foreseeable medical complications, including pressure ulcers and musculoskeletal damage. A categorical non-coverage determination for these systems would replace individualized clinical assessment, contrary to the patient-specific model historically applied in power mobility device determinations and explicitly referenced in the 2023 NCA for users of Group 2 power wheelchairs.

Finally, the proposed LCD, as written, would disproportionately harm individuals with disabilities who rely on Group 2 standard power wheelchairs. These beneficiaries often have substantial, though often not total, motor impairment or other conditions that require wheeled mobility in their homes. The proposed LCD would erect an arbitrary coverage barrier for individuals whose clinical profiles justify seat elevation but who do not meet criteria for higher-level Group 3 devices, thereby generating inequitable access to medically necessary technology and undermining Medicare’s longstanding commitment to supporting community-based living.

For these reasons, the ITEM Coalition strongly opposes the proposed LCD and urges the DME MACs to withdraw the proposed non-coverage determination as expeditiously as possible for seat elevation systems in certain Group 2 power wheelchairs. At minimum and as a temporary measure, the DME MACs should reinstate case-by-case review of seat elevation claims for individuals impacted by this proposed LCD. Longer term, we encourage the DME MAC Medical Directors to work in collaboration with disability and clinical stakeholders to develop an affirmative coverage policy for seat elevation in Group 2, non-CRT power wheelchairs that is consistent with the expansive interpretation and intent of the May 2023 NCD and NCA on seat elevation. This coverage policy should explicitly establish coverage for any Medicare beneficiary, regardless of diagnosis, who qualifies for a Group 2 non-CRT power wheelchair whose prescriber documents a need for seat elevation to improve performance of or participation in transfers, reach, and MRADLs.

The ITEM Coalition does not support a policy reversal that diminishes beneficiary access after CMS itself determined that expanded coverage was justified. Medicare beneficiaries with significant mobility impairments deserve consistency, transparency, and evidence-based policymaking—not shifting standards after years of stakeholder engagement and demonstrated clinical need. We believe it is critical for Medicare coverage policy to evolve in tandem with advances in assistive technology and contemporary standards of rehabilitation practice. The proposed LCD, as written, does not meet that standard.

⁴ 42 U.S.C. § 1395y(a)(1)(A)

⁵ *Id*

Thank you for your consideration of our comments. Should you have any further questions, please contact Peter Thomas or Michael Barnett—ITEM Coalition coordinators—at Peter.Thomas@PowersLaw.com or Michael.Barnett@PowersLaw.com.

Sincerely,

The Undersigned Members of the ITEM Coalition

Access Ready, Inc.
ACCSES
All Wheels Up
American Academy of Physical Medicine & Rehabilitation
American Association of People with Disabilities
American Association on Health and Disability
American Congress of Rehabilitation Medicine
American Macular Degeneration Foundation (AMDF)
American Medical Rehabilitation Providers Association
American Music Therapy Association
American Occupational Therapy Association
American Physical Therapy Association
Autistic Women & Nonbinary Network
Center on Aging and DIS-Ability Policy
CureLGMD2i
Cure SMA
3DA
Institute for Matching Person and Technology
International Registry of Rehabilitation Technology Suppliers (iNRRTS)
Lakeshore Foundation
Long Island Center for Independent Living
Muscular Dystrophy Association
National Clinician Task Force
National Disability Rights Network (NDRN)
National Multiple Sclerosis Society
Paralyzed Veterans of America
RESNA
Spina Bifida Association*
Team Gleason*
United Spinal Association*
The Viscardi Center

****Member of the ITEM Coalition Steering Committee***