

MEMORANDUM

To: ITEM Coalition

From: Peter Thomas, Shuchi Parikh, and Leif Brierley

Date: October 9, 2018

Re: Summary of Meeting with CMS on Medicare Coverage of Seat Elevation and Standing Feature in Power Wheelchairs

On October 3, 2018, 17 representatives of the ITEM Coalition, seven of whom were in wheelchairs, and Powers law firm staff met with Centers for Medicare and Medicaid Services (CMS) officials at CMS’ offices in Washington, D.C., to advocate for Medicare coverage of seat elevation and standing feature in power wheelchairs. ITEM Coalition members met with Dr. Kate Goodrich, Director of the Center for Clinical Standards and Quality (CCSQ) and CMS Chief Medical Officer. Accompanying Dr. Goodrich was Tamara Syrek-Jensen, Director of the Coverage and Analysis Group. Members of Ms. Syrek-Jensen’s senior program staff, as well as program officials of the Chronic Care Policy Group, including Laurence Wilson and Susan Miller, M.D., a CMS physiatrist, attended by phone. A complete list of meeting attendees can be found at the end of this memorandum.

In the meeting, coalition representatives discussed the medical and functional benefits of power seat elevation and standing feature for individuals with mobility-related conditions. The group also described the legal basis for coverage of these devices as durable medical equipment (DME). Coalition members sought feedback from CMS on the pathways for issuing a benefit category determination for power seat elevation and standing feature. This summary provides a brief review of the highlights from the meeting. For additional context, please see the associated agenda.

Key Takeaways for the ITEM Coalition:

1. CMS Should Take a Fresh Look at Coverage Standards for Power Seat Elevation and Standing Feature.

Coalition representatives requested and pushed for CMS to issue, on its own motion, a benefit category determination (BCD) for coverage of power seat elevation and standing feature. The ITEM Coalition originally met with Marilyn Tavenner, Administrator of CMS and Laurence Wilson, Director of the Chronic Care Policy Group, in 2013 to discuss Medicare coverage of seat elevation in power wheelchairs. While this was a good start, the initiative sputtered and did not move forward at the time. In Wednesday’s meeting, coalition members asked CMS to reconsider its current policy and, instead, determine that both power seat elevation and standing feature are DME because they are “primarily medical in nature,” a key requirement of the definition of DME.

CMS sought clarification as to whether the ITEM Coalition was asking CMS to reopen the National Coverage Determination (NCD) for Mobility Assistance Equipment (MAE), established in 2005, but we confirmed that we are *not* seeking this remedy. Instead, ITEM Coalition is requesting CMS—on its own authority—to reconsider its current benefit category determination on power seat elevation and standing feature and clarify that these features are considered DME. Once this occurs, CMS would then reactivate E-2300 (seat elevation) and E-2301 (standing feature), assign incremental pricing to these codes, and work toward development of a coverage policy for both codes. Coalition members also requested that if CMS does not believe seat elevation and standing feature are DME, they should put that position in writing so ITEM Coalition can address the issue with Congress.

2. Clinical Evidence Shows Power Seat Elevation and Standing Feature are Primarily Medical in Nature and, Therefore, DME.

Coalition members stressed that the policy article issued by the DME MACs had no evidence or underpinning to support their position that these features to a power wheelchair are not primarily medical in nature. The ITEM Coalition sent letters to CMS on August 7, 2018 that cite to clinical evidence in support of the medical benefits of standing feature and seat elevation. A physiatrist from the American Academy of Physical Medicine and Rehabilitation (AAPM&R) explained during our meeting the medical benefits of these features, including reducing damage to shoulder joints and ligaments, reduced susceptibility to injury and falls resulting from transfers in and out of the wheelchair, reduced pressure on the lower back, and improved respiratory function.

A physical therapist from the Clinicians Task Force explained that standing feature improves spasticity, provides effective pressure relief, and provides a prolonged stretch of muscles that are critical for the hips, knees, and ankles. Users of power wheelchairs, including Medicare beneficiaries, demonstrated the standing feature and seat elevation and testified as to the medical benefits of the features. Users also testified regarding how the devices enable them to perform essential MRADLs such as bathing, feeding, dressing, toileting, and grooming. For example, seat elevation and standing feature enables individuals to transfer effectively in and out of bed or the shower, enables individuals to cook and feed themselves without accident or injury from burns, and allows individuals to access hard-to-reach surfaces and objects so they can perform other MRADLs.

3. Standing Feature and Seat Elevation are Integral Parts of the Power Wheelchair, Which Is DME.

Coalition representatives explained that power seat elevation and standing feature are attachments that are embedded in the power wheelchair itself, which is universally considered DME (i.e., primarily medical in nature). These features are an integral part of the power wheelchair and enable the wheelchair to achieve its full therapeutic benefit. This is the same standard under which CMS issued HCFA Ruling 96-1, which clarified coverage for certain orthoses that were attached to a wheeled frame, which was considered DME. Users of the seat elevation and standing feature demonstrated that the

features were integral parts of the power wheelchair and functioned as accessories or attachments that allowed the wheelchair to achieve its full therapeutic benefit.

4. Next Steps.

During the meeting and in subsequent email communication with Dr. Goodrich and CMS officials involved in the meeting, it was established that CMS will confer amongst its staff and discuss this issue in broader depth. CMS stated that due to a series of pending regulations, they would not be able to seriously consider these issues until November, but promised that they would be in touch once they had the opportunity to meet as a team. They also offered to have us check in to ensure they are on track with deliberation of this issue. Dr. Goodrich also thanked us via email for a well-organized briefing on the issue and asked us to extend her thanks to the compelling witnesses who attended the meeting and educated her on the issue.

Meeting Attendees:

ITEM Coalition

Peter W. Thomas, JD, ITEM Coalition Counsel, Principal, Powers Law

Leif Brierley, MPH, ITEM Coalition, Manager of Government Relations, Powers Law

Shuchi Parikh, JD, ITEM Coalition, Associate, Powers Law

Alexandra Bennewith, MPA, Vice President, Government Relations – *United Spinal*

Kent Keyser, MA, Public Policy Fellow – *United Spinal*

Lee Page, Senior Associate Director, Advocacy – *Paralyzed Veterans of America*

Dan Ignaszewski, Director of Government Relations and Marketing – *Amputee Coalition*

John Wylam, JD, Manager, Advocacy – *National Multiple Sclerosis Society*

Kim Beer, Director of Public Policy – *Christopher & Dana Reeve Foundation*

Reva Singh, JD, MA, Director of Advocacy and Government Affairs – *American Academy of Physical Medicine and Rehabilitation*

Dr. Anjali Shah, M.D., Psychiatrist, Associate Professor of Physical Medicine and Rehabilitation at University of Texas Southwestern, Director of the Neurorehabilitation Program at University of Texas Southwestern, Director of the Wheelchair/Seating Program at University of Texas Southwestern – *University of Texas Southwestern, American Academy of Physical Medicine and Rehabilitation – attending via phone*

Laura Cohen, PT, PhD, ATP/SMS Principal, Executive Director – *Clinician Task Force (CTF)*

Madonna Long, Consumer, seat elevation feature wheelchair user

Karen Roy, MSW, Ms. Wheelchair America, consumer & advocate

David Carlo – Consumer, standing feature and seat elevation feature wheelchair user

Jim Meade – Consumer, standing feature and seat elevation feature wheelchair user

Linda Swan – Wife, PCA of Jim Meade

CMS

Kate Goodrich, MD, Director and Chief Medical Officer, Center for Clinical Standards and Quality

Tamara Syrek-Jensen, Director, Coverage and Analysis Group

Joseph Chin, MD, Deputy Director, Coverage and Analysis Group

Lori Ashby, Director, Division of Policy and Evidence Review, Coverage and Analysis Group

Susan Miller, MD, Senior Medical Officer, Division of Items and Devices, Coverage and Analysis Group

Karen Reinhardt, Coverage and Analysis Group

Laurence Wilson, Director, Chronic Care Policy Group