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**COMMITTEE ON LEGAL ISSUES AFFECTING PEOPLE WITH DISABILITIES**

Medicare's "In the Home" Restriction for  
Power Wheelchairs for Persons with Disabilities

February 2008

Issue:

Section 1861(n) of the Social Security Act<sup>1</sup> presently defines "durable medical equipment" to include, among other things,

"wheelchairs (which may include a power-operated vehicle that may be appropriately used as a wheelchair, but only where the use of such a vehicle is determined to be necessary on the basis of the individual's medical and physical condition and the vehicle meets such safety requirements as the Secretary may prescribe) *used in the patient's home* (emphasis added) (including an institution used as his home other than an institution that meets the requirements of subsection (e)(1) of this section or of section 1819(a)(1))."<sup>2</sup>

Durable medical equipment items that meet this definition are covered under the Medicare program. Items that do not meet this definition are excluded from coverage.

The Center for Medicare & Medicaid Services (CMS) is the federal agency responsible for administering Medicare, Medicaid and several other health-related federal programs. Presently, CMS' administration of section 1861(n) of the Social Security Act prohibits Medicare coverage for power operated wheelchairs for persons with disabilities who need such durable medical equipment to travel *outside their home*. This interpretation results in many Medicare beneficiaries and individuals with disabilities being unable to receive the appropriate mobility devices that would allow them to function independently outside of their homes and in their communities.

The "Medicare Independent Living Act of 2007" (H.R. 1809) would resolve this problem by adding the following to the definition of "durable medical equipment" that would be covered by Medicare (underlined),

wheelchairs (which may include a power-operated vehicle that may be appropriately used as a wheelchair, but only where the use of such a vehicle is determined to be necessary on the basis of the individual's medical and physical condition and the vehicle meets such safety requirements as the Secretary may prescribe) used in the patient's home (including an institution used as his home

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<sup>1</sup> 42 U.S.C. 1395x(n)

<sup>2</sup> 42 U.S.C. 1395x(e)(1) defines the term "hospital" for purposes of the Social Security Act.

other than an institution that meets the requirements of subsection (e)(1) of this section or of section 1819(a)(1), or in the case of a mobility device required by an individual with expected long-term need, used in customary settings for the purpose of normal domestic, vocational, or community activities.”

#### Background:

The statutory “in the home” language was originally meant to define durable medical equipment as devices that were provided outside of a hospital or skilled nursing facility and, therefore, warranted separate reimbursement under Medicare Part B, rather than Part A. However, CMS has interpreted this language in a way that restricts coverage of mobility devices to only those that are reasonable and necessary for use in the individual’s home. For example, an individual who is completely unable to ambulate from one area of their home to another without the use of a power wheelchair would be eligible for Medicare coverage because they need it for use in their home. An individual who can to some degree ambulate in their home without a power wheelchair, but due to their disability requires one to travel outside of their home to get to work, medical appointments, or to access goods and services within their communities are ineligible for Medicare coverage for the wheelchair.

Implementation of this law severely restricts the independence of people with disabilities by limiting their ability to participate outside of their homes and in their communities. Persons with varying degrees of disability, or those with disabilities that have intermittent effects on mobility, such as multiple sclerosis, are eliminated from Medicare coverage for mobility devices that would otherwise permit them to travel outside of their home to work or interact within their communities. This restriction directly contradicts the purpose of other government disability related laws and initiatives which promote integration of persons with disabilities into the community.

The Americans with Disabilities Act<sup>3</sup> is the premier civil rights legislation for persons with disabilities, and was designed to enable access to employment, government services and places of public accommodation for persons with disabilities – all of which exist *outside of one’s home*.

The Ticket-to-Work program is an employment initiative for people with disabilities who are interested in going to work and is part of the Ticket to Work and Work Incentives Improvement Act of 1999. This legislation was designed to remove many of the barriers that previously influenced people with disabilities’ decisions about going to work because of concerns over losing health care coverage. The goal of the Ticket-to-Work Program is to increase opportunities and choices for Social Security disability beneficiaries to obtain employment, vocational rehabilitation, and other support services from public and private providers, employers, and other organizations. As such, the Ticket-to-Work program is designed to assist persons with disabilities to gain employment and integrate into the workforce, all of which occurs outside of one’s home.

President Bush’s “New Freedom Initiative” was announced in 2001 as part of a nationwide effort to remove barriers to community living for people with disabilities. The New Freedom Initiative is a comprehensive plan that represents an important step to ensure that all Americans have the opportunity to learn and develop skills, engage in productive work, make choices about their daily lives and participate fully in community life. The Initiative’s goals are to:

- Increase access to assistive and universally designed technologies;
- Expand educational opportunities;
- Promote homeownership;

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<sup>3</sup> 42 U.S.C. §12101 *et seq.*

- Integrate Americans with disabilities into the workforce;
- Expand transportation options; and
- Promote full access to community life.<sup>4</sup>

Lastly, in 1999 in *Olmstead v. LC*<sup>5</sup> the United States Supreme Court held that the unnecessary segregation of individuals with disabilities in institutions constituted discrimination based on disability. The court ruled that the Americans with Disabilities Act requires states to provide community-based services rather than institutional placements for individuals with disabilities. This historic decision made attainable the long sought goal for people with disabilities to obtain health care services in a community setting, rather than routine institutionalization.

The *Olmstead* decision, and the above mentioned laws and initiatives adopt the appropriate civil rights standard for persons with disabilities, which is inclusion and integration into society. Medicare's outdated in-the-home restriction thwarts these goals by restricting eligibility for devices which provide mobility to only those confined to their homes. H.R. 1809 would remedy this problem by eliminating the in-the-home restriction and covering mobility devices for persons with long-term care needs who require the devices for "vocational or community activities."

#### Conclusion:

The Association of the Bar of the City of New York and its Committee on Legal Issues Affecting Persons with Disabilities urge Congress to pass the "Medicare Independent Living Act of 2007" to eliminate Medicare's "in the home" restriction on coverage for power wheelchairs, and thereby provide the appropriate mobility devices to persons with disabilities to ensure integration and participation within their communities.

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<sup>4</sup> United States Department of Health and Human Services, <http://www.hhs.gov/newfreedom/init.html>.

<sup>5</sup> 527 U.S. 581 (1999)