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***Via Email***

May 4, 2015

Kevin F. Donohue
CEA ACC
Health Care Delivery Systems Team
DHCS Office of Legal Services
P.O. Box 997413 (MS 0010)
Sacramento, CA 95899-7413

Dear Kevin:

Thank you for sharing with us DHCS's draft revised provider manual provisions on DME. We solicited input from other advocates, and have incorporated feedback from the Legal Aid Society of San Diego and Disability Rights California in our comments below. In addition, we urge you to take the following steps to ensure that all plans are using the correct standard in evaluating requests for DME:

1) By May 31, 2015, issue an APL to plans reiterating their obligation to follow 22 C.C.R. § 51160(d), and attaching this policy with our suggested revisions;
2) By May 31, 2015, communicate to DSS ALJs that plans must follow the policy set forth in follow 22 C.C.R. § 51160(d) and plan denials of DME based on the fact that it will only be used outside the home must be overturned;
3) By May 11, 2015, schedule a follow-up call with DHCS OLS and Sarah Brooks to address the five specific cases we have identified as pending to get them addressed with the plan;
4) By May 31, 2015, issue instruction to plans to review all denials of requests for DME for Medi-Cal enrollees since June 1, 2014 to ensure that the appropriate standard was applied, and re-evaluate any requests where the wrong

standard was applied without requiring the member to unnecessarily duplicate any part of the evaluation; and

5) Starting immediately, establish a process to flag any new proposed hearing decisions involving denials of DME, and review those decisions to ensure that appropriate standards were applied, alternating any decisions that use the wrong standard; DHCS should continue to use this process to closely review proposed decisions involving DME denials for at least two years.

With respect to the draft provider manual provisions, we recommend the following edits:

- **Section I. General Clinic Guidance for Wheelchairs, Seating and Positioning Components**: It would be helpful to provide a non-exhaustive set of examples that illustrate the "access to the community" reference in the second paragraph. We suggest that DHCS add the following language: "Access to the community includes IADLs such as shopping and transportation access, and should account for whether the beneficiary needs the requested wheelchair for activities such as attending doctor's appointments, shopping for groceries, and picking up prescriptions."

- **Section I.5. Can the functional mobility deficit be sufficiently resolved by the prescription of a cane, crutches or walker?:** In subsection B, the manual should explicitly note that the evaluation of a beneficiary's ability to "safely" use a cane, crutches, or walker must take into consideration the length of time or endurance required to perform ADLS and IADLs with respect to their potential use of the requested DME.

- **Section I.6. Does the beneficiary's typical environment support the use of a wheelchair and SPC?:** We recommend revising subsection B to explicitly note the typical environment may be in or out of the home, depending on the use for which the DME is requested, and that physical barriers to use of the DME within the home do no preclude identifying a need for the DME to safely access the community and complete IADLs.

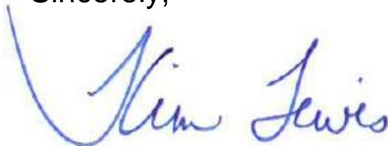
- **Section II.2. Powered Mobility Devices are medical[ly] necessary when:**
    - **Subsection C:** In this subsection the manual points to upper extremity (UE) limitations as a basis for justifying a powered mobility device. In addition to UE limitations, the manual should also reference any other limitations to one's ability to use a manual wheelchair, non-exhaustively including, limitations caused by respiratory, cardiac, fatigue,

weight/obesity and others that limitations that may preclude safe and successful use of a manual wheelchair.

- **Subsection F**: The word “home” should be replaced with “typical environment” to be consistent with other sections. In addition, the list of areas to be reviewed should be revised so that it is an inclusive, rather than an exhaustive list in order to affirm that the requested DME must be suitable and fit in the place where it is intended to be used, including outside the home for DME required for community access. This could be accomplished by prefacing the list with an “e.g.” as in section II.1.C.
- **Subsection L**: Again, the list of areas to be reviewed should be revised so that it is an inclusive, rather than an exhaustive list in order to affirm that the requested DME must be suitable and fit in the place where it is intended to be used, including outside the home for DME required for community access. This could be accomplished by prefacing the list with an “e.g.” as in section II.1.C.

Thank you again for the opportunity to review this draft. If you have any questions or need any further information, please contact Abbi (coursolle@healthlaw.org; 310-736-1652).

Sincerely,



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CC: Douglas M. Press, DHCS Office of Legal Services
Sarah Brooks, DHCS Managed Care Quality and Monitoring