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Toby Douglas, Director
Department of Health Care Services
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Dear Mr. Douglas,

We have become aware that several Medi-Cal Managed Care Plans (MCPs) in San Diego County are improperly denying requests for Durable Medical Equipment (DME) by improperly applying the Medicare medical necessity standard, which only authorizes DME for individuals who are homebound.¹ We are writing to urge DHCS to take action to instruct the MCPs that they are required under state and federal law (as well as by contract) to provide all DME, as defined by 22 C.C.R. § 51160 for Medi-Cal enrollees aged 21 years old and older, whenever it meets the medical necessity criteria in Welf. & Inst. Code § 14059.5 and/or 42 C.F.R. § 483.25. Such guidance is necessary to both clarify the MCPs' responsibility for providing these services to their members, and to clarify the current policy of the state in this regard.

We have learned of at least four different cases (see redacted notices attached) from the past two years in which the MCPs applied the incorrect standard – two involving Community Health Group, and two involving Care1st. In all cases, an enrollee with a disability was denied a power wheelchair because the plan claimed that s/he did not need the equipment to perform activities of daily living in the home. Advocates have repeatedly had to take these cases to fair hearing in order to obtain the needed DME for

¹ Care1st appears to be applying the pre-2005 Medicare rules to these cases, which only authorized wheelchairs for individuals who would be confined to a bed or chair absent the wheelchair. This standard is no longer appropriate under Medicare, much less in Medi-Cal. See CENTERS FOR MEDICARE & MEDICAID SERVS., MEDICARE COVERAGE OF POWER MOBILITY DEVICES (PMDs) 1 (2009), available at https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/PMDFactSheet07_Quark19.pdf.

their clients. We urge DHCS to take action to clarify the MCPs' responsibilities with respect to DME to avoid these unnecessary fair hearings.

As a general rule, MCPs must provide covered Medi-Cal services to their enrollees—unless such services are carved out—whenever they are “reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain.” Welf. & Inst. Code § 14059.5. The standard for when DME is covered by Medi-Cal is nearly identical to the standard used in Medicare, except for one key difference: while Medicare will only cover equipment that “[i]s appropriate for use in the home,” 42 C.F.R. § 414.202, Medi-Cal will cover such equipment whenever it “[i]s appropriate for use in or out of the patient's home.” 22 C.C.R. § 51160. Thus, MCPs have a broad obligation to cover DME, including power wheelchairs, whenever it is needed to protect life, prevent significant illness or disability, or alleviate severe pain, regardless of whether the needed equipment will be used in the enrollee's home or outside. As a practical matter, MCPs must consider enrollees' need to use a power wheelchair to access services in the community, for example to attend doctor's appointments, in determining whether the equipment is medically necessary.

Despite their legal obligations, MCPs have continued to deny power wheelchairs to Medi-Cal managed care enrollees with disabilities by application of the wrong legal standard. We urge DHCS to issue guidance in the form of an All Plan Letter, to clarify MCPs' obligations under state and federal law. We look forward to discussing this matter with you. Thank you for your consideration.

Sincerely,



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National Health Law Program



Maria Fernanda Iriarte, Managing Attorney
Disability Rights California

CC: Shelley Rouillard, Director, Department of Managed Health Care
Margaret Tatar, Division Chief, MMCD
Sarah Brooks, Chief, Program Monitoring and Medical Policy Branch
Javier Portela, Chief, Plan Management Branch
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