



This Week

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Guidance on the Motorized Wheelchair Lawsuit Settlement

THIS WEEK the following information, modified and expanded from a previous Council newsletter, has been prepared jointly by the **Illinois Council on Long Term Care** and **Illinois Health Care Association** to assist members in navigating the motorized wheelchair issue.

The State of Illinois and the Illinois Department of Healthcare and Family Services (HFS) entered into a consent decree in a class action suit of *Jackson et al. vs. Maram*. The lawsuit claimed that **HFS violated federal disability laws by failing to provide motorized wheelchairs to Medicaid-eligible nursing home residents who needed them.**

The Department's position is that, like with manual wheelchairs, **it is the facility's responsibility as part of its regular per diem payments to provide and pay for the cost of motorized wheelchairs, if they are medically necessary. The HFS does pay for motorized wheelchairs that need to be customized based on resident condition.**

Even though an objection to the consent decree was filed by the Illinois Health Care Association, on behalf of all providers, **stating that the responsibility for paying for motorized wheelchairs should rest with the Department**, not with providers, the judge ruled that specific funding in the case is not under the court's jurisdiction, but is an issue for the General Assembly. As part of this filing, objections were also made to the assessment tool and assessment process.

As a result of the judge's final ruling and according to the components of the consent decree, HFS notified residents of nursing facilities of their rights under the consent decree to request an evaluation of their need for a motorized wheelchair. The consent decree also required that facilities be notified to:

- 1) **evaluate residents who do not have the ability to personally propel manual wheelchairs to determine the medical necessity of a motorized wheelchair for those residents; and**
- 2) if there is **medical necessity** for a motorized wheelchair, the facility must obtain and pay for a motorized wheelchair for that resident, **unless the motorized wheelchair needs to be customized, in which case the Department will pay for the motorized wheelchair.**

Included with the facility notice was a list of mobility-impaired residents identified on the MDS who must be evaluated, along with all new admissions from here on in. According to the consent decree, these evaluations must be completed and returned to the department **within 45 days**. If the evaluation determines that there is a possibility the resident may have a need for a motorized wheelchair, the facility is responsible for conducting a full assessment to be submitted to the physician to make a final determination of the medical necessity for either a regular motorized wheelchair or a customized motorized wheelchair.

Here is how we see the process working..

1. The initial evaluation, using the "Motorized Wheelchair Evaluation Form" specified in the consent decree and distributed to facilities by HFS, will be conducted by a facility nurse. The answers to the questions on this form will determine if the resident is a potential candidate for a motorized wheelchair of any kind.

2. If the initial evaluation indicates a full assessment, the facility's rehab nurse or a physical therapist will then conduct a full assessment of whether the resident has the inability to propel a manual wheelchair and make a recommendation to the physician as to the medical necessity for a motorized wheelchair and the potential need for any customized aspects of the wheelchair.

3. The facility's medical director, in consultation with the resident's physician, if applicable, will make the final determination as to the **medical necessity** for a motorized wheelchair and if any customized features are required.

It should also be noted that any non-customized motorized wheel chairs purchased by the facility are not the property of the resident. We encourage facilities to meet with their nursing and rehab staff, as well as their medical directors to talk about this process.

When is a motorized wheelchair "medically necessary," and not just convenient? There is no agency definition. "Medical necessity" is **entirely determined by the physician**, presumably in consultation with a physical therapy evaluation.

When does a wheelchair need to be "customized?" According to the HFS Handbook for Medical Equipment and Supplies (at www.hfs.illinois.gov/assets/020705dme.pdf), Section M-212.44 on Customization:

"Non-standard components, non-standard accessories and modifications to the base of a wheelchair or to its components or accessories may be approved if medical necessity is established. Depending on the patient's condition, the need for customization may be known at the time of the initial purchase or may arise later as the patient's condition changes. A need to add standard components or accessories to a wheelchair, or a need for an unusually large or small wheelchair are not considered customization.

Requests for customization must include:

- *An itemized price breakdown of all needed components, accessories and modifications*
- *The manufacturer's product and price information, if applicable*
- *A physical or occupational therapy evaluation, which clearly identifies the patient's physical limitations and abilities related to the wheelchair, medical history and current medical status*
- *Documentation of other, less expensive options that were considered and why those options will not meet the patient's medical need*
- *A physician's certification of medical necessity. Medical necessity must be documented for each component, accessory or modification as it relates to the patient's medical needs.*

Note: Simply describing the function of a component or accessory does not constitute adequate documentation of the patient's medical need. This information is required in addition to the basic patient data, such as diagnosis, which is routinely required to establish medical necessity for the wheelchair."

For community Medicaid clients who are not nursing home residents, HFS also requires the form DPA 3701H – Questionnaire for Power Equipment Wheelchair, which can be found on page 31 at <http://www.hfs.illinois.gov/assets/072006dmeappendix.pdf>. The questionnaire provides a guide for determining the medical necessity for a motorized wheelchair.