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Power Mobility Coalition Seeks Court Ruling to Stop the Rush to Implement CMS Rule *Regulation Issued without Notice and Comment Threatens Industry, Beneficiaries*

(Washington, DC) – Late yesterday, the Power Mobility Coalition (PMC) filed suit against the federal government on behalf of suppliers of power mobility devices (PMDs) nationwide. The PMC seeks a preliminary injunction preventing the Department of Health and Human Services and the Centers for Medicare and Medicaid Services (CMS) from implementing a rule that would decrease beneficiary access to PMDs, increase the regulatory burdens placed upon physicians, and irreparably harm suppliers of PMDs.

Issued without proper notice and comment by CMS, the interim final rule, "Conditions for Payment of Power Mobility Devices," becomes effective on October 25, 2005.

“Since the rule is scheduled to take effect a full month before comments are due, it is difficult to believe that CMS could consider public comment and modify the rule at a later date,” stated PMC Director Eric Sokol.

Repeatedly, the power mobility community has tried to work with CMS to develop new regulations regarding the power mobility benefit.

"Unfortunately, attempts by members of the power mobility community to cooperate with CMS have been ignored, and CMS has given no indication that they plan to delay the rule, leaving PMC little choice but to seek an injunction," said Sokol. "Once the rule is stopped, we hope to open a dialogue with CMS and develop solutions together that will address the needs of beneficiaries, suppliers, physicians, manufacturers, and the federal government. It is critical that any new rule eliminate subjectivity and codify an objective and fair claims process while preserving program integrity."

The PMC is disappointed that the rule eliminates the Certificate of Medical Necessity (CMN) that established objective criteria, replacing it with a vague documentation requirement that allows CMS to subjectively second-guess the best medical judgment of the treating physician.

“CMS has eliminated the form mandated by Congress and moved to a subjective system that will create fear and uncertainty," PMC Counsel Stephen Azia explains. "Contrary to rules governing the Medicare program and testimony from Administrator McClellan, suppliers will now be asked to review medical records and determine whether they are sufficient to satisfy Medicare. The impact of this change on our nation's elderly and disabled is enormous as the physician will not control the medical product beneficiaries receive."

The PMC, along with other industry groups, clinicians, physicians, advocates for the disabled, and key Members of Congress have all weighed-in, calling on CMS to delay the rule and work with interested stakeholders to address the many concerns. To this end, the PMC and other advocates attended the Special Open Door Forum held by CMS concerning the interim final rule. The PMC has also issued a statement outlining its concerns, as well as submitting comments on the new documentation requirements set out in the rule.

A copy of the motion is available on the Power Mobility Coalition website www.pmcoalition.org .

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