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PMC FILES A PAPERWORK REDUCTION ACT COMPLAINT AGAINST CMS
Coalition Contends that Suppliers are Being Illegally Targeted for Audits and Required to Provide Documentation in Violation of PRA Protections

On behalf of supplier members, the Power Mobility Coalition (PMC), a nationwide association of suppliers and manufacturers of motorized wheelchairs and power operated vehicles, and five of the PMC's supplier members have filed a petition with the Office of Management and Budget (OMB) asserting that the Centers for Medicare and Medicaid Services (CMS), through its contractors, are conducting a general investigation of the power mobility industry that requires suppliers and physician to collect data and submit documentation in violation of the Paperwork Reduction Act (PRA). The petition calls on the OMB to enforce PRA protections and instruct CMS and its contractors to cease this illegal investigation and data collection until such time as CMS follows PRA protocol, including providing public notice and comment and OMB review of required documentation.

In their complaint to the OMB, the PMC asserts that CMS contractors, known as Durable Medical Equipment Regional Carriers (DMERCs), specifically targeted for post-payment audit those suppliers that ranked within the top 50 or 100 in power mobility utilization in the DMERC's region for a specific period of time. As part of this "post payment review," the DMERC required that each targeted power mobility supplier provide additional documentation to support the audited claims.

Under PRA protections, however, any "collections of information" imposed on ten or more persons must be approved by the Director of the OMB, must undergo a formal notice and comment period, and must display a valid OMB control number. In addition, the PRA "collection of information" requirement applies during the conduct of general investigations of a class of licensees or an entire industry.

The PMC's complaint demonstrates that CMS and the DMERCs are conducting a general investigation of the power mobility industry by targeting the nation's largest suppliers. This general investigation requires suppliers to submit additional documentation beyond the congressionally mandated, OMB-approved, Certificate of Medical Necessity (CMN) to process a power wheelchair claim. Such requests for additional information, such as progress notes and physician records, constitute an illegal record keeping requirement in violation of the PRA.

Further, the complaint notes that CMS, in a recent proposed rule requiring that physicians document in their medical records the need for the prosthetic, orthotic, durable medical equipment, and/or supplies ("DMEPOS"), admitted that physicians are not currently required to document the need for DMEPOS, including power wheelchairs and power operated vehicles. Therefore, through CMS' own admission, documentation like progress notes or physician records must be formally approved through the PRA process.

“For too long, lawful suppliers have been targeted for audits and unlawfully compelled to provide the DMERCs with documentation, above and beyond the CMN,” stated PMC Director Eric W. Sokol. “By filing this PRA complaint, the PMC and its supplier members are holding CMS and the DMERCs feet to the fire by requiring them to conform to Congressional protections as passed in the PRA when requesting documentation from power mobility suppliers.”

PMC Counsel Stephen M. Azia, echoed Sokol’s remarks. “The OMB-approved CMN has been acknowledged by both the Courts and Congress as the Medicare document of record for payment of power mobility claims. On the other hand, beneficiary progress notes and physician records are not certified, are often informal, and may- or may not - discuss a beneficiary’s ability to ambulate. Our hope is that the PRA complaint will compel OMB to stop CMS from playing this game of ‘gotcha’ with suppliers by finding some reference in an uncertified document and using it to overturn the physician-certified CMN and deny an appropriate claim by a needy beneficiary.”

A complete copy of the PMC’s PRA complaint can be found at the PMC website at: www.pmcoalition.org.

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