

**TESTIMONY OF DARA CORRIGAN
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Good morning, Mr. Chairman and Members of the Committee.

Many Medicare beneficiaries with impaired mobility have a legitimate need for wheelchairs and benefit greatly from their use. However, we have found significant and troubling abuses of the Medicare wheelchair benefit that deplete the Medicare Trust Fund of scarce dollars and harm beneficiaries. Today, I will describe some particularly worrisome fraud schemes that our investigators recently have uncovered. I also am issuing two inspection reports on wheelchair problems in the Medicare program. In one study, we found that most power wheelchair claims for Medicare beneficiaries did not meet the program's coverage criteria. The second study addresses Medicare's excessive reimbursement amounts for power wheelchairs.

POWER WHEELCHAIRS IN THE MEDICARE PROGRAM

Our office has devoted considerable resources to conducting investigations, evaluations, and audits in the area of medical equipment and supplies. This area of the Medicare program has been particularly susceptible to fraud, waste, and abuse over the years. We have identified problems related to a wide range of items and equipment including oxygen, transcutaneous electrical nerve stimulators, seat lift chairs, orthotic body jackets, wound care supplies, incontinence supplies, and lymphadema pumps. We have found that many medical equipment and supplies: (1) have been susceptible to fraud and abuse; (2) fail to meet coverage criteria and prescription requirements for particular items and supplies; (3) and have been reimbursed at excessive amounts. When we do shut down the fraud and abuse for one item or supply, it is only a matter of time before we see similar issues associated with other medical equipment and supplies.

The three vulnerabilities mentioned above are now present with respect to power wheelchairs. To preserve the integrity of the power wheelchair benefit and prevent excessive payments, Medicare must ensure that suppliers are legitimate, beneficiaries are eligible to receive the equipment, physicians are prescribing equipment appropriately, and equipment is reasonably priced.

Over the past several years, Medicare has seen notably dramatic growth in expenditures for power wheelchairs, particularly for the power wheelchair with Healthcare Common Procedure Coding System (HCPCS) code K0011, which is for a standard-weight power wheelchair with programmable control parameters. Spending for power wheelchairs increased approximately 350 percent from 1999 to 2003, while total Medicare expenditures have increased only 23 percent for that same time period. Between 2001 and 2002 alone, Medicare payments for procedure code K0011 rose from \$513 million to \$829 million, a 62 percent increase. Payments for K0011 power wheelchairs continue to rise and have already reached \$1.2 billion for 2003, which is 12 percent of total Medicare Part B expenditures for medical equipment and supplies. Beneficiaries are responsible for 20 percent of the allowed payment amount in the form of coinsurance.

Medicare also has seen an increase in utilization of the power wheelchair benefit. The number of Medicare beneficiaries with at least one claim for a motorized wheelchair rose from approximately 55,000 in 1999 to an estimated 274,000 in 2003, an increase of almost 400 percent. During the same time period, the overall Medicare population rose only 1 percent per year. We recognize that some of this rise may be attributable to such things as technological improvements or successful beneficiary outreach rather than solely fraud and abuse issues. However, as I will discuss below, we believe that the wheelchair benefit is a significant vulnerability to the Medicare program.

There are three main controls in place to help limit abuse of the wheelchair benefit. First, in order to qualify for power wheelchairs, beneficiaries must meet Medicare's coverage criteria. Beneficiaries must be bed or chair confined, unable to operate a wheelchair manually, and capable of safely operating the controls of the power wheelchair. A Medicare beneficiary who qualifies for a power wheelchair usually is totally non-ambulatory and has severe weakness of the upper extremities due to a neurologic or muscular disease or condition.

Second, to help ensure the appropriateness of the equipment prescribed, suppliers who submit claims for power wheelchairs must include a Certificate of Medical Necessity (CMN). A physician is required to sign, date, and complete the medical justification portion of the CMN. This is perhaps the most fundamental safeguard that the program relies on to ensure that Medicare pays for wheelchairs that are medically necessary and reasonable. Suppliers must maintain copies of signed CMNs in their records along with documentation showing that items were delivered to beneficiaries. Typically, CMNs are submitted electronically to the Durable Medical Equipment Regional Carriers (DMERCs) who are responsible for processing the claims. Original copies of CMNs are not reviewed unless DMERCs specifically request this information from the supplier on a pre- or post-payment basis. Similarly, suppliers are not required to submit proof of delivery with the initial claim for payment, and DMERCs only collect delivery documentation as part of a pre- or post-payment review.

Finally, over the past several years, the National Supplier Clearinghouse has strengthened the supplier enrollment process in an effort to limit ease of entry by fraudulent suppliers. In order to obtain a Medicare billing number, suppliers must complete an application, submit to an onsite inspection of the business location, and meet 21 standards that help ensure that the suppliers are operating legitimate businesses. Although there is no Federal licensure requirement, States can require licensure, and some States have adopted such a requirement for home medical equipment suppliers.

PAYMENT TO FRAUDULENT SUPPLIERS

Despite CMS's efforts, we have found that fraudulent suppliers continue to bill the Medicare program. Our investigative activity continues to disproportionately (based on program expenditures) be focused on medical equipment and supplies. From 2002 through 2004, we excluded from the Medicare and Medicaid programs 277 providers associated with medical equipment supply companies. However, there is evidence that unscrupulous

wheelchair suppliers have gained a foothold in the Medicare program, and greater effort must be made to prevent these types of suppliers from gaining admission to the Medicare program.

The fraud we have uncovered generally falls into the following categories: (1) filing claims for equipment that was never delivered; (2) billing for high cost equipment when lesser cost equipment was actually provided (upcoding); (3) billing for the component parts of a piece of equipment instead of the entire unit (unbundling); (4) delivering medical equipment to beneficiaries who do not need it; and (5) paying kickbacks to physicians and other sources in return for the referral of beneficiaries, access to beneficiaries and/or signing CMNs. We have been working on some of these investigations since as early as 1996.

I have attached summaries of several investigations of power wheelchair suppliers that we have conducted. I would like to highlight two cases that involved schemes to fraudulently bill Medicare and Medicaid for medical equipment, including power wheelchairs. Although the first case is not nearly the largest wheelchair scheme in the country, nor even in South Florida where it occurred, it provides some insight into the elaborate schemes that individuals will concoct to defraud Federal health care programs.

The Government's investigation revealed that co-owners of two medical equipment supply companies used recruiters to enlist beneficiaries to participate in a scheme to defraud Medicare. The recruiters told beneficiaries to bring their Medicare information to a central location, such as a community center in a housing development, where they were instructed to sign phony documents. These documents included post-dated delivery tickets. The CMNs in support of the false claims were procured from physicians who received kickbacks or were forged.

The beneficiaries would take turns posing on one wheelchair, used as a prop, while their pictures were taken with a Polaroid camera, purportedly to document that a wheelchair had been delivered to them. On one occasion, the recruiters had planned staged deliveries in a second-story apartment with no elevator access. They could not lift the heavy power wheelchair up the building's stairs. To overcome this problem, the beneficiaries were walked down the stairs so that the phony deliveries could be staged in the building's parking lot. Remember, the beneficiaries were supposedly non-ambulatory. The beneficiaries never expected actually to receive a wheelchair. In exchange for their participation, beneficiaries were paid \$200 to \$800 cash or given nutritional products.

Over a 9-month period, the co-owners billed Medicare for over \$5 million in wheelchairs that were never delivered, and received \$2.3 million in stolen payments. These co-owners were sentenced to 87 months and 54 months in prison, respectively, for their roles in submitting fraudulent power wheelchair claims to Medicare.

The second case illustrates the significant dollar amounts at stake in these schemes. The owner of a group of companies and his co-conspirators billed for medical equipment, including power wheelchairs, that was either not provided at all or upcoded. For

example, beneficiaries were provided temporarily with a K0011 wheelchair. The program was billed for the K0011, but the K0011 ultimately was swapped for a less expensive scooter. In other cases, Medicare was billed for wheelchair accessories that never were provided. The conspirators involved in this scheme sent proceeds to an overseas bank account. They netted over \$25 million. The owner was sentenced to seven years in prison and ordered to pay \$14.4 million in restitution, jointly and severally with his co-conspirators. In addition, the court ordered a \$14.8 million forfeiture against the owner.

An independent sales representative from that same company targeted beneficiaries in low income housing areas to receive medical equipment, including power wheelchairs. He forged paperwork, including CMNs, and submitted it to the owner of the companies. This same sales representative was also involved in a separate scheme with a different DME company owner. The two submitted claims for power wheelchairs, but switched the equipment out for less expensive scooters, falsified CMNs, including forging physician signatures, and submitted claims for medical equipment that was never delivered. This sales representative was sentenced to 18 months in prison and ordered to pay \$2.2 million in restitution for his role in the conspiracy to defraud the Medicare and Medicaid programs.

MEDICARE COVERAGE FOR POWER WHEELCHAIRS

Not only have we uncovered fraud and abuse related to the wheelchair benefit through our investigations, but we also have found that many beneficiaries do not meet current coverage criteria for K0011 power wheelchairs. One of the reports that we are releasing today addresses whether claims for K0011 power wheelchairs met Medicare's coverage and documentation requirements.

For our review, we selected a simple random sample of 300 claims for procedure code K0011 from the year 2001. We then collected CMNs and delivery documentation from suppliers and medical records from ordering physicians. Using Medicare coverage criteria, an independent medical review contractor conducted a coverage review of medical records received from physicians or suppliers. We also contacted the beneficiaries who received our sampled power wheelchairs.

We found that 31 percent of reviewed claims did not meet Medicare's coverage criteria for any type of wheelchair. An additional 45 percent of reviewed claims did not meet Medicare's coverage criteria for the K0011 power wheelchair, but may have met criteria for another, less expensive mobility device. Ultimately, only 13 percent of reviewed claims actually met the coverage criteria for K0011 power wheelchairs. For another 11 percent, the reviewer could not determine whether the claims met the coverage criteria for the K0011 power wheelchair due to insufficient documentation. Based on our review, we estimate that Medicare and its beneficiaries paid \$178 million in 2001 for K0011 power wheelchairs that did not meet Medicare's coverage criteria.

Our review also identified other problems with Medicare claims for K0011 power wheelchairs. For over half of the claims reviewed, CMNs and/or delivery documentation were missing, incomplete or dated after the date of service. In addition, some beneficiaries reported either not using their power wheelchairs or using them outside the home only.

There may be a number of reasons why Medicare is paying for claims that do not meet coverage and documentation requirements. Problems might arise because coverage criteria for different types of mobility devices may not be explicit enough, and physicians may not be familiar with Medicare's coverage criteria when ordering mobility devices for their patients. Ordering providers play a key role in determining the need for and utilization of equipment billed to Medicare. This is recognized in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), which states that payment may not be made for power wheelchairs unless a physician, physician's assistant, nurse practitioner, or clinical nurse specialist has conducted a face-to-face examination of the patient and written a prescription for the item. CMS relies on the clinical judgment of these health care professionals to ensure that Medicare only pays for items that are most appropriate for beneficiaries. However, the only document that provider is required to review and complete when ordering a wheelchair is the CMN. Coverage guidelines are not listed on the CMN for power wheelchairs, and medical necessity questions on CMNs are not completely consistent with coverage policy. A lack of provider education about Medicare's coverage criteria for wheelchairs could adversely affect physicians' ability to make informed decisions about the types of mobility devices that are best for their patients, which could ultimately lead to inappropriate Medicare payments.

EXCESSIVE PRICING FOR POWER WHEELCHAIRS

The second report that I am releasing today assesses Medicare's reimbursement levels for K0011 power wheelchairs. We have consistently found over the years that many items of medical equipment have been reimbursed excessively. This has in large part resulted because Medicare fee schedules for medical equipment, enacted in 1987, are based on historical charges to Medicare or retail prices available in the marketplace.

With the rapid growth in utilization and expenditures of the power wheelchair benefit, it is essential that the Medicare program pay for power wheelchairs at levels that are consistent with prices in the marketplace. We found that Medicare and its beneficiaries pay more than consumers or suppliers for K0011 power wheelchairs. A wide variety of power wheelchair models are reimbursed under the K0011 procedure code; however, Medicare does not collect information on the specific model of power wheelchair actually provided to beneficiaries. As part of our review, we identified Medicare-covered K0011 power wheelchairs from the Statistical Analysis Durable Medical Equipment Regional Carrier's product classification list. We also identified K0011 power wheelchair models that were provided to Medicare beneficiaries in 2001. We then obtained prices for these wheelchairs from three sources: the websites of power wheelchair suppliers, two national

wholesalers, and suppliers who negotiated directly with manufacturers and distributors of K0011 power wheelchairs.

We found that the median purchase prices for both consumers and suppliers of K0011 power wheelchairs were lower than the Medicare reimbursement amount. The prices we obtained for K0011 power wheelchair models varied widely, from a low of \$999 to a high of \$16,995. Ninety-four percent of the prices we reviewed were below the Medicare reimbursement amount.

Compared to the median Medicare reimbursement amount of \$5,297, consumers were able to purchase K0011 power wheelchairs for a median price of \$3,863, suppliers were able to purchase K0011 power wheelchairs from two wholesalers for a median price of \$2,363, and suppliers who negotiated directly with distributors and manufacturers were able to obtain K0011 power wheelchairs for a median price of \$1,550.

For the models of K0011 power wheelchairs actually supplied to Medicare beneficiaries, we found that the median prices to consumers and suppliers were below the Medicare reimbursement amount of \$5,297. The median prices for these power wheelchairs were very close to the median prices obtained for all the power wheelchairs, with the prices ranging from \$1,699 to \$3,888.

We believe that the program and its beneficiaries could have realized substantial savings if the Medicare reimbursement amount for K0011 power wheelchairs more closely resembled the costs to consumers and suppliers. If Medicare set the K0011 reimbursement amount at the median prices available to consumers, the Medicare program and its beneficiaries would have saved over \$224 million in 2002. If the Medicare program based its reimbursement amount on the median price negotiated by suppliers with manufacturers and distributors, the program could have saved \$586 million in 2002.

We did not collect data regarding supplier administrative costs related to furnishing K0011 power wheelchairs to Medicare beneficiaries. Therefore, the median prices available to suppliers do not include these associated supplier costs. These estimates of potential program savings would be lower if median prices had included suppliers' administrative costs. On the other hand, we would assume that the prices collected from websites of suppliers include profit margins and any costs related to billing other insurers. We have no evidence to suggest that the costs associated with billing the Medicare program are significantly different from the costs of billing other insurers.

I would like to note that MMA reduced the payment amount for certain items of durable medical equipments, including power wheelchairs. As a result of MMA, the price for K0011 power wheelchairs is reduced to \$5,097.

CORRECTIVE ACTIONS

Obviously, it is more desirable to prevent fraud and abuse from occurring than it is to try and recoup program losses after they have occurred. To that end, we have worked closely with program officials over the years to institute many reforms in the area of medical equipment, including consolidating claims processing into four DMERCs, enhancing enrollment standards, enacting standards that suppliers must meet in order to bill Medicare, and conducting site visits for suppliers.

Given the continuing levels of unacceptable abuses in this area, both for medical equipment in general and power wheelchairs specifically, it is critical that additional systems improvements and preventive practices be adopted. The two reports I am issuing today make many recommendations for program improvements. We believe that the recommendations in these reports warrant consideration. Some of these recommendations include:

- Evaluate the medical conditions and functional abilities that are associated with each of the different types of mobility aids and describe these conditions/abilities in the coverage policies;
- Educate ordering providers about Medicare's coverage criteria for different types of medical equipment, including power wheelchairs, manual wheelchairs, and scooters;
- Educate Medicare beneficiaries about coverage criteria for medical equipment and supplies, including wheelchairs and scooters, as beneficiaries themselves play a key role in ensuring that Medicare does not pay for medically unnecessary or unused items;
- Create a new coding system for K0011 power wheelchairs that accounts for the variety in models and prices for power wheelchairs;
- Use the pricing information obtained as part of our reviews to determine whether payments should be reduced; and
- Require DMERCs to conduct frequent reviews of the K0011 procedure code to ensure appropriate payments. This includes ensuring that suppliers have complete and thorough documentation.

RECENT EFFORTS TO CONTROL ABUSE

In September 2003, CMS and the OIG issued a joint press release to announce new efforts to stem problems with the power wheelchair benefit. In order to address significant increases in allowances for power wheelchairs and indications of improper billing activity, CMS has launched a campaign to curb abuse of the Medicare program by unscrupulous suppliers of mobility products. In fact, as part of this campaign, CMS has

already begun implementing some of the OIG recommendations that I have mentioned here today.

For example, initiatives in CMS's campaign include: aggressively scrutinizing new applications for supplier numbers; publishing regulations that will enhance CMS's ability to screen new supplier applications; and collaborating with law enforcement agencies to process fraud cases and ensure application of sanctions, and civil or criminal prosecutions. As part of its campaign, CMS may also revise coverage policy for power wheelchairs and scooters to ensure that national policy accurately defines the conditions under which Medicare will cover mobility products. They will adopt a consistent approach to medical review; clarify physicians' responsibilities as prescribers of mobility devices; and educate beneficiaries about Medicare coverage guidelines. In addition, CMS plans to develop inherent reasonableness review guidelines and place power wheelchairs first in line for analysis for potential inherent reasonableness adjustments. This way, Medicare can be assured that it is paying appropriately for power wheelchairs.

CONCLUSION

Mr. Chairman, as I previously stated, the abuses associated with power wheelchairs truly are troubling. These inappropriate payments waste taxpayer dollars that could otherwise fund appropriate equipment for needy Medicare beneficiaries.

Power wheelchairs can greatly improve the quality of life for an individual who suffers from limited mobility. While it is extremely important to preserve this critical benefit and ensure that those who truly need power wheelchairs are able to obtain them, there are indications that the power wheelchair benefit has been a target for abuse by unscrupulous providers; ultimately, these schemes can victimize our beneficiaries. Wheelchair abuses are the latest in a long line in the medical equipment area that the OIG has taken concerted efforts to address. We are pleased that our continued work in this area is contributing to heightened awareness related to reimbursement for medical equipment and supplies.

We applaud the efforts of CMS and Congress to curb power wheelchairs fraud, waste, and abuse while simultaneously preserving the benefit for those recipients who truly need power wheelchairs. We also appreciate your own efforts on both fronts, Mr. Chairman. We all must take further steps to eliminate abuses, while continuing to provide a benefit that can greatly enhance the quality of life of our beneficiaries.

APPENDIX A

RECENT WHEELCHAIR INVESTIGATIONS

- In Florida, a man was formally charged with conspiring to defraud Medicare in connection with approximately \$5 million of fraudulent claims for the cost of power wheelchairs and accessories that were allegedly supplied by two DME companies. Under the direction of the companies' proprietors, employees of these companies conducted staged deliveries of motorized wheelchairs to Medicare beneficiaries. At these staged deliveries, patients were given several documents to sign, including delivery confirmation tickets. The suspects would forward the documents along with fraudulent certificates of medical necessity to a billing company, which submitted the claims to Medicare for the cost of the motorized wheelchairs and accessories. On August 29, 2003, the man was sentenced to 24 months imprisonment and ordered to pay \$406,000 in restitution for conspiracy to defraud and money laundering.
- Another Florida DME company owner conducted a scheme to continue billing Federal health care programs while excluded. In 1997, he was convicted of Medicaid fraud and sentenced to a term of community control with intermittent confinement and work release. While on work release, he continued working as a sales representative for a DME company. He continued his fraudulent scheme of billing Medicare and Medicaid for high-priced, new power wheelchairs when he actually provided used wheelchairs and scooters; he also billed Medicare for unnecessary repairs of wheelchairs. In addition, he opened three DME companies using the names of straw nominee owners to circumvent his exclusion from the Medicare and Medicaid programs. Beginning in 1999 and continuing through 2002, he received over \$1 million from Medicare by submitting claims for power wheelchairs that were not provided, were used, or were exchanged for scooters. He also billed Medicare for unnecessary repairs of the equipment he previously provided. On November 25, 2003, he was sentenced to 37 months in prison.
- A Michigan DME company owner persuaded elderly patients to purchase motorized wheelchairs they did not need. He was sentenced on August 21, 2003, to 63 months incarceration and ordered to pay \$1 million in restitution for defrauding Medicare, Medicaid, and a private insurer. In addition, he forfeited \$1 million in assets obtained through the fraud.
- In Georgia, a DME company owner and his business partner submitted numerous false claims to Medicare for motorized wheelchairs that were never provided to beneficiaries from 1997 through 2002. The owner and his partner were sentenced on May 20, 2003, for their role in this scheme to defraud Medicare. The owner was sentenced to 18 months incarceration and ordered to pay \$504,000 in joint restitution with his business partner; and the business partner was sentenced on May 1, 2003, to 30 months incarceration.

- In California, Medicare reimbursed a DME company owner for power wheelchairs and other medical equipment that were never provided to beneficiaries. He was sentenced on August 18, 2003, to 33 months confinement and ordered to pay \$249,000 for health care fraud.
- In Pennsylvania, an OIG investigation revealed that, through a marketing program, Pride Mobility Products Corporation, a manufacturer of power wheelchairs, scooters, and lift chairs, solicited and received monthly payments from suppliers in return for referring sales leads to those suppliers. On October 22, 2002, the company agreed to pay \$80,000 to resolve its liability for violations of the kickback provision of the Civil Monetary Penalties Law. In addition to the payment under the settlement agreement, the company was also required to adopt and implement certain compliance measures.
- In North Carolina, from January 1999 through April 2000, the owner of a DME company billed Medicare for power motorized wheelchairs when he actually provided beneficiaries with less expensive scooters. The company owner was sentenced on April 25, 2002 to 13 months in prison and ordered to pay \$200,000 in restitution for mail fraud.
- A Texas DME company was involved in a scheme that provided motorized scooters and wheelchairs to Medicare beneficiaries, but billed Medicare and private insurance companies for equipment that was either not medically necessary or was more expensive than the equipment actually provided. The company was ordered to pay a \$10,000 fine on February 21, 2002, for mail fraud and wire fraud. The company's owner was sentenced on February 22, 2002, to 18 months imprisonment and ordered to pay \$300,000 in restitution for mail fraud. A salesperson was ordered on February 28, 2002, to pay \$85,000 in restitution for wire fraud.