



COMMISSIONER  
Jon Weizenbaum

February 26, 2015

To: Nursing Facilities (NFs)

Subject: **Provider Letter 15-08** – Power Mobility Device Considerations

The purpose of this letter is to address concerns related to residents' use of power mobility devices such as power wheelchairs and scooters in NFs.

### **Policy**

Title 40, Part 1, Texas Administrative Code (TAC) §[19.403](#)(a) relating to Notice of Rights and Services, states: "The facility must inform the resident, the resident's next of kin or guardian, both orally and in writing, in a language that the resident understands, of the resident's rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. This notification must be made prior to or upon admission and during the resident's stay if changed." If a nursing facility admits a resident who has a power mobility device for his or her own use, the nursing facility must have a policy addressing the use of such devices in the nursing facility.

### **Resident Right**

A Medicaid certified facility must not discriminate on the basis of disability. In accordance with 40 TAC §[19.1901](#)(3), a nursing facility is required to meet applicable provisions of other federal regulations including 45 Code of Federal Regulations (CFR), Title 45, Part 84, regarding nondiscrimination on the basis of a disability. Section §[19.1901](#)(3) states, "Although these regulations are not in themselves considered [nursing facility] requirements under 42 Code of Federal Regulations 483, their violation may result in the termination or suspension of payment with federal funds, or the refusal to grant or continue payment with federal funds." Therefore, a nursing facility that denies access and service to a potential resident may be found in noncompliance with state rules and federal regulations.

A licensed only NF must also not discriminate on the basis of disability. 40 TAC §[19.402](#)(a) relating to Exercise of Rights, indicates that the resident has the right to exercise his rights as a resident at the facility and as a citizen or resident of the United States. 40 TAC §[19.402](#)(b) indicates the resident has the right to be free of discrimination, and 40 TAC §[19.402](#)(d) requires the facility to comply with all applicable provisions of the Human Resources Code, Title 6, Chapter 102 including not being denied appropriate care on the basis of his disability.

Additionally, a Medicaid and Medicare certified NF must not discriminate on the basis of disability. In accordance with [F150] 42 CFR §483.10 relating to Resident Rights indicates a facility must protect and promote the rights of each resident. [F151] 42 CFR §483.10(a)(1) indicates the "resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States"... and 42 CFR §483.10(a)(2) indicates the "resident has

the right to be free of interference, coercion, discrimination and reprisal from the facility in exercising his or her rights.”

### **Balance and Safety Concerns**

Power mobility devices allow an individual with a disability and medical condition that makes ambulation difficult or impossible to independently access the individual’s environment. Such access contributes significantly to an individual’s mental and psychosocial well-being. However, a power mobility device can pose a potential risk to the safety and well-being, and property of its user and to others and their property.

40 TAC §[19.701](#)(4) relating to Quality of Life, Accommodation of needs, states: “...A resident has the right to: (A) reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and....” Therefore, the nursing facility must have policies in place to protect the safety and well-being of power mobility device users and other residents.

A nursing facility must assess and document a resident’s need regarding the use of a power mobility device in the same way that the nursing facility identifies each resident’s individualized needs and initiates a care plan with appropriate interventions to meet the resident’s needs. Use of the power mobility device must be included in the resident’s care plan with specific interventions proposed. Interventions must be done quarterly or when a significant change in condition occurs to evaluate for efficacy and must be updated as needed.

If a resident who has previously used a power mobility device without difficulty begins to operate the device in a manner that produces safety concerns for the operator or others, or results in damage to property, the process of assessment, care planning, and developing interventions must be re-evaluated. As much as is practicable to assist the resident to achieve his or her highest level of well-being, the nursing facility must develop and implement interventions to assist the resident maintain the use of the power mobility device.

### **Evaluate Supervision**

Interventions might include retraining the resident on how to drive the device, re-educating the resident regarding safety, moving furniture or other items that obstruct a resident’s normal pathways, and providing fall intervention supervision when the resident is using the device according to the residents care plan.

### **Life Safety Code**

A nursing facility should transport the power mobility device for a resident to appointments if possible or have an appropriate reason for not doing so. If the facility is treating a resident with power mobility devices differently than other residents without an appropriate reason, the facility could be subject to a complaint that it is not keeping the resident at the highest functional level or that it is discriminating against a resident who is dependent on a power mobility device.

Nursing facilities should allow a resident to store the power mobility device in the resident's room if there are no Life Safety Codes concerns, such as blocking or limiting egress. If two roommates disagree on what devices can be stored in their room, the facility staff has an obligation to mediate between the two parties and to develop a solution that is amicable to both parties.

Alternate locations for charging the electronic mobility device must not obstruct hallways. The charging area must have impermeable flooring, be well ventilated and the facility must have a written plan available for staff to pick-up/return chairs and cope with emergency situations occurring while chairs are charged.

There are two types of batteries, sealed gel and lead acid. The lead acid batteries release highly flammable hydrogen gas, and maintaining electrolyte level can lead to acid spills, charging results in sparking in rooms with oxygen use. Although power mobility device may originally have sealed batteries, the lower cost of the lead acid type battery may lead to their addition later.

As with resident leased oxygen, the facility is still responsible for controlling the hazard. Charging stations should be alternately located so as not to put residents at risk for this type of hazard exposure. The Occupational Safety & Health Administration (OSHA) standards reference 29 CFR §1926.441(a)-(b) relating to General Requirements, indicate the following:

- Batteries of the unsealed type shall be located in enclosures with outside vents or in well ventilated rooms and shall be arranged so as to prevent the escape of fumes, gases, or electrolyte spray into other areas.
- Ventilation shall be provided to ensure diffusion of the gases from the battery and to prevent the accumulation of an explosive mixture.
- Battery charging installations shall be located in areas designated for that purpose.
- Floors shall be of acid resistant construction unless protected from acid accumulations.

This provider letter does not apply to custom manual wheelchairs purchased for Preadmission Screening and Resident Review (PASRR) eligible residents.

For questions concerning Life Safety Code, please contact the Architectural Unit at (512) 438-2371. For questions concerning this letter, contact a policy specialist in the Policy, Rules and Curriculum Development unit at (512) 438-3161.

Sincerely,

*[signature on file]*

Mary T. Henderson  
Assistant Commissioner Regulatory Services

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