



April 25, 2022

SUBMITTED ELECTRONICALLY VIA www.regulations.gov

The Honorable Pete Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

**RE: Department of Transportation Public Meeting on Air Travel by Persons
Who Use Wheelchairs (DOT-OST-2022-0014)**

Dear Secretary Buttigieg:

On behalf of the Independence Through Enhancement of Medicare and Medicaid (ITEM) Coalition, we thank you for the opportunity to submit written comments in response to the recent public meeting on Air Travel by Persons Who Use Wheelchairs (DOT-OST-2022-0014). The ITEM Coalition is a national consumer-and clinician-led coalition advocating for access to and coverage of assistive devices and technologies for persons with injuries, illnesses, disabilities, and chronic conditions of all ages. Our members represent individuals with a wide range of disabling conditions, as well as the providers who serve them, including such conditions as multiple sclerosis, paralysis, cerebral palsy, spinal cord injury, brain injury, stroke, spina bifida, limb loss, and other life-altering conditions. Many of the individuals the ITEM Coalition represents use wheelchairs, including power, manual, standard, and complex wheelchairs, as well as scooters, either as their sole form of ambulation or to augment their ability to be mobile across long distances.

We appreciate the efforts the Department of Transportation (DOT) is taking to improve the air travel experience for people with disabilities, particularly those who use wheelchairs. The recent public meeting on air travel by persons who use wheelchairs raised important issues, and we look forward to further actions by DOT to ensure that all passengers have a safe, dignified, and comfortable air travel experience. It is critical that DOT and other policymakers have an operational understanding of the importance of wheelchairs as Durable Medical Equipment (DME) to individuals with mobility impairments. Wheelchairs improve users' health, independence, and functional capabilities and must be handled with proper care when these individuals travel by air (or any other mode of transportation).

Individuals with mobility impairments need to be able to rely on air travel when necessary and enjoy the benefits of air travel without fear that the sole source of their personal mobility will be damaged and non-functional once they arrive at their destination. Given the millions of Americans who use wheelchairs as their sole source of mobility, the airlines should recognize

their strong financial self-interest in safeguarding wheelchairs for their mobility-impaired passengers.

Typical Experiences of Individuals with Mobility Impairments During Air Travel

Travelers who rely on wheeled mobility should be able to expect airlines and other transportation carriers to treat their mobility devices with great care and caution. Yet, the record is replete with examples of how airlines, in particular, mishandle wheelchairs in a manner that causes significant damage, ultimately limiting or prohibiting their effective use upon arrival at a destination. Examples include broken wheelchair frames, arm rests, front hangers, push-handles, foot rests, head rests, wheelchair seats (which are often highly customized), and damage that results from lying wheelchairs on their sides during transport.

This stems from a lack of adequate training of airline staff with respect to the important features of wheelchairs that must be handled with care, how to properly load them into position, how to secure wheelchairs, and how to treat them in relation to other luggage being stowed for transport. Airlines and other transportation carriers have a responsibility to take every precaution to handle, properly secure, and stow a passenger's wheelchair in a safe and consistent manner, and to train their staff accordingly to ensure compliance with this standard.

Wheelchairs & Other Mobility Aids

The broad category of wheelchairs includes a wide range of assistive mobility devices, from standard manual wheelchairs that may be prescribed to provide mobility after a temporary injury, all the way to complex rehabilitation technology (CRT) power wheelchairs, which are typically used by individuals with severe and complex mobility disabilities that entirely or significantly limit their ability to ambulate, often necessitating users to spend their time in the wheelchair when they are not in bed or a stationary chair. Wheelchairs are prescribed to meet a variety of medical needs, including maximizing health, independence, and function for the individual user; allowing participation in activities of daily living such as hygiene, grooming, and dressing; facilitating transfers from a wheelchair to a commode, bed, or other surface; reducing the risk of falls and other injuries relating to a lack of unassisted mobility; and much more. Of course, the most obvious function of a wheelchair is to facilitate mobility from point A to point B. In short, for many wheelchair users, such equipment is critical to their daily lives.

These wheelchairs can often be complex technologies, consistent with the complexity of the myriad conditions that necessitate their use. Further, CRT wheelchairs, in particular, are customized and modified to fit the exact needs of the specific user, under the supervision of qualified DME suppliers and Assistive Technology Professionals. These wheelchairs are not interchangeable, the way airport wheelchairs are used by airport staff to assist otherwise ambulatory passengers move from one gate to another. For that matter, airplane aisle chairs, many of which have been reported to be in a state of disrepair – lacking straps and usable seat cushions, including significant lengths of time that wheelchair users are expected to stay in their aisle chairs – can cause significant health damage to the individual such as pressure injuries. The needs of a CRT wheelchair user frequently cannot be met by a standard wheelchair or even a

replacement CRT wheelchair without proper customization and this requires clinical expertise that takes time and resources to achieve the proper configuration and fit.

The vast majority of wheelchairs of all kinds fall under the health care benefit category of “Durable Medical Equipment” or “DME,” which is defined in government regulations applicable to the Medicare program.¹ This definition is used for coverage purposes under Medicare, but DME can be furnished to users through any number of payers, including Medicaid, other federal payers, private or employer-sponsored insurance, workers’ compensation insurance, or paid for out-of-pocket by an individual.

This category is interpreted as medical equipment that meets five specific prongs of the definition:

Durable medical equipment means equipment, furnished by a supplier or a home health agency that meets the following conditions:

- 1) Can withstand repeated use;
- 2) Has an expected life of at least 3 years;
- 3) Is primarily and customarily used to serve a medical purpose;
- 4) Generally is not useful to an individual in the absence of an illness or injury; and
- 5) Is appropriate for use in the home.

The ability to withstand repeated use and the expected life of at least three years both address the durability requirement of DME. There are international ISO and ANSI standards for construction and durability of wheelchairs that ensure durability and sound construction. These performance parameters are related to the design intent, meaning how wheelchairs are primarily used for mobility purposes. As a result, the test standards are related to the ability to withstand curb drops, climbing hills, handling uneven surfaces, stability on an incline, maneuvering over obstacles, speed and range on a single battery charge. The Food and Drug Administration is focused on safety and efficacy based on the *product’s intended use*. The intended use of a wheelchair or scooter is for mobility. There may be certain models of wheelchairs or scooters that are more durable than others, but wheelchair users should not be required to select their primary mobility device based on their needs for relatively infrequent air-travel.

As the definition of DME states, to be covered by Medicare or any other health care payer, DME must be medical in nature and used to address an individual’s illness or injury. Finally, the “in the home” requirement is a coverage requirement that has nothing to do with the ability of wheelchairs to withstand daily use outside the home, nor does it mean that such wheelchairs are fragile and are not capable of being taken outside the home for community use. It is critical to understand that the “in the home” requirement is *solely* applicable when considering whether or not the Medicare program (or other payers that adopt this standard) will pay for the costs of furnishing DME to Medicare beneficiaries, and is not intended to limit the beneficiary’s activities in their daily life beyond that purpose.

¹ 42 C.F.R. § 414.202.

Nonetheless, some of the airline representatives recently expressed the view that airlines cannot be responsible for damage to wheelchairs that are not designed or constructed to provide mobility outside the individual's home. This interpretation is inaccurate and misguided. Most wheelchairs, especially CRT wheelchairs, are designed and constructed to support a beneficiary's mobility needs across the lifespan, in a variety of settings in support of community integration to the greatest extent possible. This extends to air travel and other forms of transportation. Wheelchair users must be able to trust the safe and reliable delivery of their wheelchairs when they reach a destination after air travel or other mode of transportation.

We appreciate your consideration of our comments. Should you have any further questions, please contact the ITEM Coalition coordinators at Peter.Thomas@PowersLaw.com and Joseph.Nahra@PowersLaw.com or by calling 202-466-6550.

Sincerely,

ITEM Coalition Steering Committee:

ALS Association
Amputee Coalition
Christopher & Dana Reeve Foundation
Paralyzed Veterans of America
Spina Bifida Association
Team Gleason
United Spinal Association