



May 11, 2020

Director
Office of Regulation Policy and Management (00REG)
Department of Veterans Affairs
810 Vermont Avenue NW, Room 1064
Washington, DC 20420

RE: RIN 2900–AP39, Adaptive Equipment Allowance

Dear Director:

The National Mobility Equipment Dealers Association (“NMEDA”) is a non-profit trade association dedicated to expanding opportunities for people with disabilities to safely drive and/or be transported in vehicles modified with mobility equipment to fit their unique and specific needs. As the national trade association for the automotive mobility industry, NMEDA and its members possess distinct subject-matter expertise and have demonstrated a long-standing commitment to improving transportation options for veterans seeking to enhance their independence, mobility, and quality of life through automotive mobility solutions.

NMEDA’s mission is to promote, and to assist with the establishment and maintenance of, the highest quality and safest vehicle modification and adaptive equipment installation outcomes for the disabled driving community. With that mission in mind, NMEDA submits this comment in response to – and requests clarification regarding the proposals and language included in – the United States Department of Veterans Affairs’ (“VA”) proposed rule (“PR”) to amend VA regulations governing the provision of a monetary allowance to certain veterans and eligible members of the Armed Forces who require adaptive equipment (“AE”) to operate an automobile or other conveyance.

The page numbers and italicized quotations included in this comment refer to the PR published in Vol. 85, No. 49 of the Federal Register, and appear in chronological order.

Supplementary Information

Page 14430 of the PR states: *AE is individually prescribed to assist the eligible person to operate, or ride safely as a passenger, in an automobile or other conveyance.*

- (1) NMEDA notes the absence of an explicit reference to the use of driver and/or AE evaluations to ensure that VA is authorizing AE that is appropriate for the eligible person’s unique circumstances. Such evaluations are a fundamental aspect of any individual’s automotive independence process and should not be overlooked.
- (2) The PR also does not reference any means by which VA intends to review or approve the installation of AE – whether performed by a registered provider or an unregistered provider – to

confirm that such AE installations have been properly completed and that the final automotive mobility solution is appropriate for the eligible person's operation and/or use.

NMEDA requests confirmation from VA that both evaluations and installation reviews will be addressed in the subsequent VMSA-related Proposed Rule, which the association understands will be published for comment once this AE payment-related directive has been finalized.

§17.156 Eligibility for Automobile Adaptive Equipment

Page 14430 of the PR states: *Current paragraph (b) provides that payment or reimbursement of reasonable costs for the repair, replacement, or reinstallation of adaptive equipment deemed necessary for the operation of the automobile may be authorized by VA.*

NMEDA proposes revising this language to account for AE deemed necessary "for the operation *and/or* use of the automobile" in order to ensure that the automotive mobility needs of eligible persons who may not operate an automobile but who require AE to "use" (*i.e.*, ride safely as a passenger in) an automobile or other conveyance are met. Examples of such AE include but are not limited to automobile conversions, transfer/valet seating, wheelchair/scooter lifts, and securement systems. The association urges VA to consider how the above-referenced language may be interpreted to exclude "passenger only" veterans as well as the payment or reimbursement for AE deemed necessary for eligible persons who cannot or have not been authorized to operate an automobile. The inclusion of veterans who may not actually operate an automobile but instead wish to ride safely as a passenger is vital to the comprehensive nature of this rulemaking.

§17.157 Definitions

Page 14430 of the PR states: *Adaptive equipment is currently defined to include "any term specified by the Under Secretary for Health or designee." Adaptive equipment is generally understood to refer to tangible pieces of equipment rather than words or terms. Accordingly, we would amend the definition to refer to any item.*

NMEDA requests confirmation that the PR's proposed amended definition considers the continually advancing complexity and sophistication of both AE and automobiles. The term "any item" must account for both tangible and non-tangible (*i.e.*, software and other electronic interface technologies) equipment, both of which are and will continue to be essential for the safe and functional operation of modified automobiles and AE. Considering VA's desire to account for future technological developments, NMEDA recommends that the agency explicitly state that both tangible (*e.g.*, pieces of equipment) and non-tangible (*e.g.*, software and other non-visible technological components) items are covered by this proposed definition.

Page 14430 of the PR states: *VA proposes to rely on NHTSA expertise in order to ensure that installations and equipment meet appropriate quality standards. More information is located on NHTSA's website and brochures at: <http://www.nhtsa.gov/Driving+Safety/Disabled+Drivers>*

- (1) It is NMEDA's understanding that, while NHTSA has enforcement authority to pursue defects due to improper equipment installations, the agency does not engage in activities intended to "ensure that installations and equipment meet appropriate quality standards." NMEDA strongly

encourages VA to reconsider its proposed reliance on NHTSA to ensure quality, as NHTSA's expertise in the AE arena is focused on vehicle safety and not on the quality of AE installation, replacement, or repair.

- (2) Please note that the above-referenced NHTSA weblink is not functional. A "does not exist" error message appears when access is attempted.

Page 14430 of the PR states: *The first term VA would define is manufacturer. For the purposes of this program, VA would adopt and use the statutory definition of manufacturer as used in the National Traffic and Motor Vehicle Safety Act ("The Safety Act"). See 49 U.S.C. 30102(a)(6).*

Please note that 49 U.S.C. 30102(a)(6) does not define "manufacturer" but instead defines "motor vehicle." The statutory definition of "manufacturer" can be found at 49 U.S.C. 30102(a)(5).

Page 14431 of the PR states: *VA would define registered provider and unregistered provider. In the proposed definition section, VA would classify all manufacturers, modifiers, and alterers registered on the NHTSA Modifiers Identification Database, currently available at <http://www.nhtsa.gov/apps/modifier/index.htm>, as registered providers. VA would classify any individual or entity not registered with NHTSA as an unregistered provider.*

- (1) NMEDA encourages VA to note the following constraints associated with the NHTSA Adapted Vehicle Modifier Identification Database ("the Database"): The PR acknowledges that "VA does not approve, endorse, or assess the abilities or any modifiers to perform any request or represented modification services" due to such services being "beyond the scope of [VA's] expertise." Importantly, the agency (NHTSA) that VA proposes to rely on to define "registered provider" and "unregistered provider" includes a similar disclaimer on its Database website: "NHTSA does not approve or endorse any of the modifiers who have furnished information under Part 595. The data provided is only as accurate as the information submitted by each modifier and is not verified or validated by NHTSA. Furthermore, the database is updated as new information is received but is not purged of those modifiers who may have over time changed names, addresses, or gone out of business. NHTSA does not assess the abilities of any of the listed modifiers to perform any requested or represented modification services."

NMEDA questions VA's reliance on this Database and strongly urges VA to recognize the implications of relying on a Database that does not approve or endorse the providers listed on said Database; does not verify the accuracy of information supplied by providers seeking to be listed on said Database; does not sufficiently update ("purge") said Database; and does not assess the abilities of providers currently listed on said Database.

Stated differently, VA reliance on the Database as an indicator of vendor competence would be misplaced, misleading, and potentially dangerous. Simply put, the Database is not a listing of credible vendors proven to meet objective quality and safety criteria. (Please note that NMEDA members' Database registration, business information, and "abilities" are assessed and confirmed during every dealer member's annual independent third-party audit as required by NMEDA's Quality Assurance Program.)

- (2) It is unclear to NMEDA why VA has chosen to reiterate the existing distinction between “registered” and “unregistered” providers using the Database as its primary reference point. VA, NHTSA, and NMEDA have all previously acknowledged that the Database is insufficient for VA adoption or use as a competency standard. As such, the following clarifications are necessary:
- a. Whether the registered/unregistered provider distinction is solely meant to address the payment of labor (also referred to as “installation”) costs to registered providers vs. unregistered providers;
 - b. In what manner or by what method VA intends to confirm that unregistered providers are not conducting or being reimbursed for activities intended to be performed exclusively by registered providers; and
 - c. Confirmation that VA will – as outlined in the Veterans Mobility Safety Act of 2016 (“VMSA”) legislative language and as mandated by Public Law 114-256 – develop a comprehensive policy that covers quality standards for providers (both registered and unregistered) of automobile adaptive equipment services to veterans; consistently apply (to both registered and unregistered providers) those standards for safety and quality of both equipment and installation throughout VA; and provide for third-party certification of both registered and unregistered providers.

Page 14431 of the PR states: *VA would define the term VA Adaptive Equipment Schedule for Automobiles and Other Conveyances (the Schedule) to mean the VA schedule that contains the maximum allowable reimbursement amounts for the listed adaptive equipment. The Schedule would also include the maximum hourly labor rates for installation, repair, reinstallation, and replacement of this equipment and allowable fees that VA will pay. The amounts listed on the Schedule are based on the National Mobility Equipment Dealers Association’s (NMEDA) Average Price Survey for 2018 and represent the historical input of members of the mobility equipment industry across the United States.*

- (1) NMEDA’s 2018 Average Price Survey instructions requested that dealer members “[p]lease indicate the total cost (including installation) for the equipment listed below.” The association wishes to make clear that the high, low, and average AE prices listed in NMEDA’s 2018 Average Price Survey are inclusive of installation (when applicable).
- (2) NMEDA values this PR’s reliance on our association, our members’ industry knowledge, and our Average Price Survey. The association welcomes the opportunity – and is prepared – to assist VA with publication of a final Schedule that is based on robust, precise, and statistically significant data. Perhaps most importantly, the final Schedule published in conjunction with the final rule should be based on the most current data. Given that the PR’s proposed Schedule is based on data collected nearly two years ago, NMEDA strongly recommends: (i) that VA’s proposed Schedule utilize the most current survey of this type and (ii) that NMEDA assist with this endeavor by committing to conducting this survey (at a minimum) every other year and modifying its traditional approach to the 2020 Average Price Survey (likely by engaging a neutral third party to conduct the survey). Were NMEDA to pursue such an approach to the 2020 NMEDA Average Price Survey, the resulting data could be available by or before August 1 in order to meet the proposed

September 30 publication date of VA’s Schedule as well as coincide with the Veterans Benefits Administration’s annual budget period beginning on October 1.

Example—VA Adaptive Equipment Schedule for Automobiles and Other Conveyances

Page 14433 of the PR states: *VA proposes creating a Schedule that would set national payment/reimbursement rates utilizing the high cost itemized in NMEDA’s Average Price Survey, which is published annually.*

NMEDA requests that VA correct this reference given that the NMEDA Average Price Survey is currently conducted and published biennially (not annually).

Page 14435 of the PR states: *[a]lmost anyone can serve as an unregistered provider, and unregistered providers may not possess the necessary training or access to information that would tend to normalize or standardize expended labor time. To ensure some control over programmatic costs, VA would not reimburse or pay labor costs of unregistered providers.*

VA’s acknowledgement that “unregistered providers may not possess the necessary training or access to information that would tend to normalize or standardize expended labor time” is concerning. Given VA’s concession that unregistered providers may not possess the training or access to information that would tend to produce normalized or standardized labor times, how does VA intend to ensure that unregistered providers possess the training or access to information necessary to produce safe, durable automotive mobility outcomes for veterans?

Page 14436 of the PR states: *To assist with determining reimbursement and payment amounts, VA would rely on the Consumer Price Index (CPI) to update the costs on the Schedule for all AE.*

NMEDA has concerns with VA’s proposal to rely on CPI to update costs on the Schedule. By way of example, how does VA intend to accurately update the AE cost Schedule when a new model year automobile (e.g., a hybrid automobile) is released? Vehicular and AE technologies are evolving and will continue to evolve, and the associated expenses must be accounted for if VA’s Schedule is intended to be accurate and credible. It is NMEDA’s position that increasingly sophisticated automobile technology and newly developed AE product prices will not be accurately reflected by a CPI-reliant update.

(As previously noted, NMEDA’s Average Price Survey is currently conducted biennially. In a good faith effort to ensure that VA’s final proposed Schedule accurately reflects current AE pricing – and that the Schedule will reliably incorporate inevitable future adjustments to the maximum allowable reimbursement amounts listed in the initial published Schedule – it is the association’s position that VA and industry should discuss the execution of a rigorous and comprehensive Average Price Survey; that 2020 figures must be utilized as the foundation of the agency’s initial Schedule; and that the Schedule should subsequently be updated at least biennially based on the results of said Average Price Survey.)

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NMEDA recognizes and appreciates the time and effort VA has dedicated to developing this PR. The association’s comments are submitted with the intent of producing meaningful change and ultimately improving veterans’ experiences with VA’s provision of AE and related services. A detailed and thorough

implementation of this PR – as well as the implementation of the comprehensive policies mandated by the VMSA – will be tremendously beneficial to veterans, VA, and associated stakeholders.

Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Langfield', is centered on the page. The signature is fluid and cursive, with a large initial 'D' and a long, sweeping tail.

Danny Langfield
Chief Executive Officer
National Mobility Equipment Dealers Association