



## **AOPA 2<sup>nd</sup> Quarter 2012 Staff Report**

**To: AOPA Membership**  
**From: Thomas F. Fise, Executive Director**  
**Date: July 20, 2012**

**Subject: 2012 – Plus and Minuses and More to Come**

The overriding news was the long awaited Supreme Court decision that upheld the individual mandate and basically preserved the remaining provisions of the Affordable Care Act (ACA) with one refinement. ACA provisions will go forward on schedule including the annual productivity adjustments which will reduce typical Medicare fee schedule annual inflation updates by about 1 per cent or so per year. The first productivity adjustment impact was felt in 2012 as the fee schedule update went from the 3.6 percent scheduled increase based on the Urban Consumer Price Index to 2.4 percent after the 1.2 percent ACA productivity adjustment was applied.

O&P medical devices under the proposed rule implementing ACA are still likely to be untaxed under the exemption for devices purchased at retail for individual use. AOPA met with U.S. Treasury and IRS officials in January of 2011 and made the case that O&P devices qualify for the same exemption accorded eyeglasses and hearing aids as provided in the Affordable Care Act. However, danger still lurks until the proposed rule is published in final form prior to its January 1, 2013 effective date with the O&P exemption intact. AOPA testified at Treasury Department hearings May 16, 2012 seeking clarification to assure that in the final rule Treasury addresses the fact that the Congressional purpose of the retail exemption provision would be thwarted if the tax were to be applied anywhere higher in the distribution chain, e.g. component suppliers. AOPA is very hopeful that the exemption stays intact in the final regulations.

All of the program integrity provisions designed to reduce waste, fraud and abuse in the Medicare and Medicaid programs remain. These include the procedures for screening, oversight and reporting for providers that participate in Medicare, Medicaid and Children's Health Plans. Many of these provisions have already been and will continue to be implemented, e. g.; many of the intensified O&P RAC audits and physician documentation enforcement issues trace back to these provisions in the law.

The Independent Payment Advisory Board (IPAB) would remain intact but has emerged as one of the most controversial aspects of the ACA. The IPAB, like other parts of the ACA and the ACA itself, face continued repeal efforts and the election outcome may bolster or dampen chances for these repeal efforts.

Under the Plus category, AOPA and O&P Alliance partners successfully made the case to ward off competitive bidding for Off-the-Shelf Orthotics for Round 2 as well as in the re-bid process for Round 1; expressed relief when PDAC rescinded its O&P medical device labeling

requirements; and was gratified when orthotics and prosthetics were ranked in importance with physician office visits in the Essential Health Benefits Guidance Bulletin issued December 16, 2011 by Secretary Sebelius in conjunction with the HHS recommendations on essential benefits inclusion. AOPA had buttressed its case on O&P being included as an essential health benefit by commissioning a study by the Society of Human Resource Management (SHRM) that refuted a dated and flawed Department of Labor study that showed less than a 50 percent incidence of O&P being an included benefit in insurance plans. The prevalence of a benefit in private plans was one of the criteria for inclusion.

SHRM's study, which was shared with Secretary Sebelius by AOPA president, Tom DiBello, CO, FAAOP, reported the more timely and realistic figure of O&P inclusion in about 75% of the plans. This confirmed an earlier study undertaken by AOPA in seven major markets of large employer plans which also showed about a 75 percent incidence of O&P inclusion.

The HHS Guidance Bulletin delegated the final decision of what's included to the states based on benchmark plans spelled out in the Bulletin. To assist members in helping their own state officials choose the plans with O&P benefits, AOPA retained McGuireWoods Consulting to develop a state by state survey of which benchmark plans included O&P benefits so AOPA members can make sure only plans with O&P benefits are considered by their state officials..

### **2012 Policy Forum Scores Big Time for O&P**

More than 300 appointments with members of Congress and staff solidified the opportunity for O&P to be front and center April 18<sup>th</sup> as the O&P community made its annual trek to Capitol Hill. On Tuesday, April 17<sup>th</sup>, members were briefed on the key issues by AOPA lobbyists and staff supplemented by remarks from four members of Congress who appeared on the program. Rep. Dutch Ruppersberger (D-2<sup>nd</sup> MD), Rep. Glenn Thompson (R-5<sup>th</sup> PA), Rep. Charles Dent (R-15<sup>th</sup> PA) and Rep. Todd Rokita (R-4<sup>th</sup> IN) all contributed important insights on pending issues and how to be effective advocates. O&P PAC Fundraisers were held for Rep. Thompson and Senator Ron Wyden (D-OR). Later that day Rep. Thompson enthusiastically spoke on behalf of H.R. 1958, the Medicare O&P Improvements Act, on the House floor. Sen. Wyden jointly introduced a companion bill in the U.S. Senate February 17, 2012 along with Sen. Olympia Snowe (R-ME) and Sen. Chuck Grassley (R-IA) which has since gained two additional members of the Senate Finance Committee as co-sponsors – Senators Ben Cardin (D-MD) and Debbie Stabenow (D-MI).

Securing five co-sponsors from members of the Senate Finance Committee with jurisdiction over Medicare legislation represents a real coup for the O&P community and enhances the possibilities of this legislation being enacted. It's unlikely to be enacted as a stand-alone bill. But, with the projected savings of \$250 million over five years, it might have a chance to be included as part of a larger healthcare measure where it could be an attractive offset under the "paygo" provisions for a proposal or proposals with a similar spending price tag. That could occur as a last minute scramble after the election and Congress is forced to deal with the "doc fix" and other pressing issues but the odds are diminishing for this opportunity as it appears more and more likely that this Congress may duck these hard choices, leaving them for the next Congress to deal with.

As always, important events like the AOPA Policy Forum are made possible by the loyal members of AOPA who attend but even more directly by the member firms who help underwrite the cost. This year's group of loyal sponsors included Cailor Fleming Insurance, Cybertech Medical, The Fillauer Companies, Freedom Innovations, Kinetic Research, Ottobock, Tamarack Habilitation Technologies, Townsend Design, TRS Inc., and WillowWood.

## **Cost Effectiveness Study Expanded Dramatically to Capture Bigger Picture**

A first ever, cost effectiveness study measuring the longer term costs associated with O&P intervention versus a cohort of patients with the same diagnoses not receiving O&P care promises to provide solid evidence of the dollar benefit of timely O&P care for Medicare, Medicaid and insurers. This study is the starting point of what are likely to be additional studies pinpointing specific cost effectiveness of various treatment programs for various diagnoses.

The study, commissioned by the Amputee Coalition and funded by AOPA, is being conducted by Dobson DaVanzo, a noted healthcare policy research firm, which has secured four years of Medicare services data from CMS. AOPA's Board of Directors received a preliminary report on the first phase at their January Board meeting which showed sufficiently positive results to warrant a larger investment in a more comprehensive Medicare services database.

## **Additional Research Focuses on Comparative Effectiveness**

The British Institute of Technology (BCIT) received the research contract to compare the effectiveness of dynamic and non-dynamic prosthetic feet for various patient levels. The \$150,000 project is financed by AOPA and five foot manufacturers – Endolite, Freedom Innovations, Ossur, Ottobock and WillowWood.

Comparative effectiveness of the Microprocessor Knee versus non-microprocessor knee is the subject of another \$250,000 research award to the University of Pittsburgh which will measure benefits to patients of the two types of devices. The project is funded by AOPA and four manufacturers – Endolite, Freedom Innovations, Ossur and Ottobock.

The Center for O&P Learning and Evidence-Based Practice (COPL) scored the various submissions in response to the Request for Proposals and recommended awarding the grants to BCIT and U of Pittsburgh. The Center also reviewed and scored submissions in response to an RFP let by AOPA for a series of small grants (\$15,000) which are intended to lay the groundwork for more extensive studies that will attract more significant funding. The AOPA Board is scheduled to act on the COPL recommendations at their July 16<sup>th</sup> Board of Directors Meeting.

## **Foot Project Coding Recommendations Building Further Credibility**

A final research project award expected later this year invites academic institutions to examine various protocols of the Foot Project Report which recommends HCPCS codes for prosthetic feet including the round robin self-testing process used in determining codes for various feet. The Foot Project was undertaken in response to an earlier request to AOPA by SADMERC (since replaced by PDAC as a CMS contractor) to assist in finding a way to better classify existing prosthetic feet into appropriate HCPCS codes. The Report was presented to PDAC and CMS, December 13, 2010 and a follow-up meeting in February of 2012 resulted in the PDAC recommendation that the round-robin self testing protocol should be reviewed by an academic third party to verify its efficacy and to establish further credibility for the coding recommendations. The RFP has been developed and distributed to academic institutions.

To further establish the Report's credibility, AOPA separately secured standing as a Standards Development Organization under the aegis of the American National Standards Institute (ANSI). The Foot Project Report was then submitted to the ANSI Executive Standards Council (ESC) for review and comments by its members. After several comment opportunities and revisions, ANSI

has notified AOPA that the Foot Project Report has been approved by ESC.

### **More on Coding –“Lift the Veil” Says O&P Alliance to CMS!**

Concerns about the lack of transparency in the annual HCPCS code deletion and addition process over the years with seldom any explanation prompted the O&P Alliance to petition CMS for a more open process. On February 3<sup>rd</sup>, AOPA and the other partners in the O&P Alliance met with CMS Deputy Administrator, Jonathan Blum pressing for greater clarity, appeal options and overall due process in these areas. In a letter to CMS Acting Administrator, Marilyn Tavenner that set the stage for the Blum meeting, the Alliance referenced a specific code change and said, “The sudden and unwarranted deletion of this billing code illustrates a series of concerns we have with the lack of due process afforded by the Centers for Medicare and Medicaid Services (CMS) with respect to the HCPCS Coding Workgroup and the current processes in place to assign codes and coding descriptions to DMEPOS items and related services, particularly orthotics and prosthetics.

“This set of issues have been of concern to the O&P Alliance for several years and it is not the first time that HCPCS codes have been summarily deleted without public notice prior to such a decision being made (e.g., HCPCS codes L2860 and L3890). In fact, the O&P Alliance has been working in recent years with a broader coalition focused on these same HCPCS Level II billing code concerns, the Alliance for HCPCS II Reform.

Sadly, no response from CMS yet, but efforts will continue to unmask the process for the benefit of O&P providers and their suppliers.

### **O&P Alliance Members Meet with CMS Acting Administrator**

The April 16<sup>th</sup> meeting of O&P Alliance members with Acting Administrator, Marilyn Tavenner coordinated by AAOP Executive Director, Peter Rosenstein, was another step forward in creating awareness for O&P issues. Three specific positives emerged when the Administrator acknowledged the quality of co-sponsors of S. 2125, the Medicare O&P Improvements Act (all five are from Senate Finance Committee); her awareness of the issues surrounding physician documentation, partly triggered by a letter Sen. Ben Cardin (D-MD) had written following a briefing by AOPA urging timely, hassle free patient access; and her comment that CMS needs to have further internal discussions on attaining a reasonable position on the topic.

AOPA through one of its lobbyists had earlier initiated a back channel communications with CMS Administrator Tavenner’s office knowing that they would need to respond to Senator Cardin’s letter. Ms. Tavenner introduced the physician documentation issue into the discussion, saying that she understood the problem, was committed to finding a “middle ground” but that it would not be easy (presumably because both OIG and the CMS DME MAC contractors are involved).

AOPA received unofficial word from the CMS Program Integrity staff (who urged O&P professionals to appeal all rejected claims to the ALJ level with the expectation of favorable outcomes) that while they agreed with AOPA about physician documentation, others at CMS did not agree, so the issue would need to be resolved at the CMS Administrator level.

The physician documentation issue has been relieved somewhat by the PDAC notification that a physician visit/order prior to a prosthetic follow on service may not be required for a replacement prosthesis comparable to the one the patient already had.

## **Further CMS Meeting Seeks Solution to Physician Documentation Issues**

A follow up O&P Alliance meeting May 8<sup>th</sup> with CMS officials responsible for the actions of audit contracts and the DME MACs, provided an opportunity to point out deficiencies in the Office of Inspector General (OIG) Report titled “Questionable Billing by Suppliers of Lower Limb Prostheses,” that in large part has triggered the hold ups and derailing of O&P claims payments.

The Alliance members pointed out that the OIG report did not differentiate whether the “questionable billing practices” were perpetrated by licensed and/or accredited providers or by those having no evidence or credentials which demonstrate qualifications for providing O&P services. Other issues included the OIG’s mistaken premise that physicians generally have a strong awareness of all aspects of O&P devices; did not reflect the prevailing standard of care; that OIG did not understand the immediate impact of their report where CMS contractors treated their recommendations as if they were the “law of the land;” and why were claims that were sufficient in July of 2011 deemed 96% deficient as to physician documentation in September 2011. The final flaw in the OIG report was the inference that documentation of the O&P professional had no legitimate role in the patient’s record.

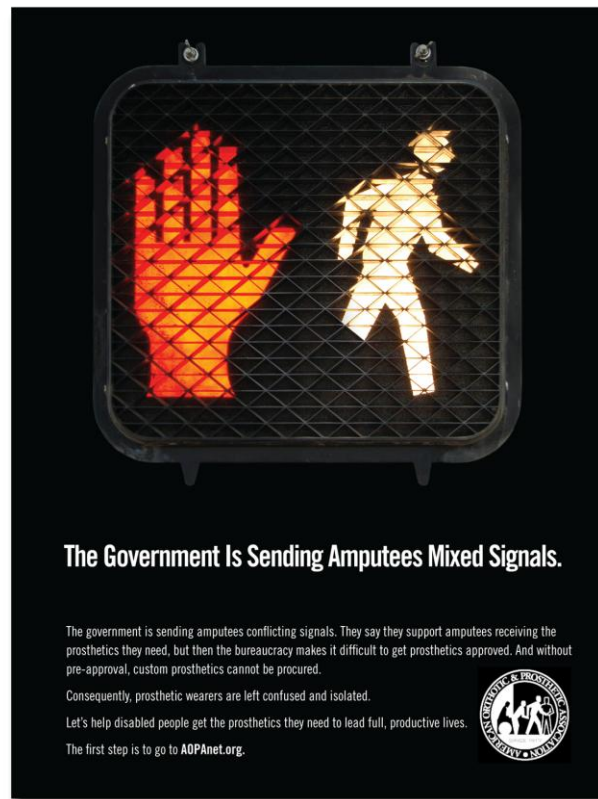
A very positive result of the meeting were assurances from CMS medical personnel that the O&P practitioner’s files do constitute a legitimate part of the patient/physician needed medical record and the offer from an attending CMS official to review any examples of egregious claim denials by CMS contractors.

Another plus in the works is that the House Energy and Commerce Committee along with the Senate Finance Committee have both expressed interest in pursuing whether CMS contractors have overstepped their authority in their draconian approach to audits and claims denials. Due to AOPA lobbyist efforts, the Senate Finance Committee staff invited AOPA to submit questions and examples of egregious audit and denials actions by contractors in anticipation of forthcoming hearings that would help define the audit and denial issues more clearly.

Step by step AOPA and O&P Alliance partners are pushing for a resolution to the issue and treating it as a top priority but it continues to be a very challenging process with no quick fix.

## **Advertising Campaign Rounds Out Efforts on Physician Documentation**

It’s not enough to write official letters, hold meetings and keep members informed to make something happen in Washington. An AOPA effort to roll back the unnecessary and burdensome physician documentation requirements and the related OIG inspired audit issues includes another strategy – public advocacy. An effective tool in reaching the policy and decision makers in Congress and CMS are transit ads placed at Metro and bus stops in the immediate Washington area convenient to Capitol Hill and CMS personnel. The transit ads are particularly arresting as they visually depict an amputee with a prosthesis stranded in the middle of a red/green stoplight walkway with a caption reading, “The government is sending amputees conflicting signals. They say they support amputees receiving the prosthetics they need but then the bureaucracy makes it difficult to get prosthetics approved. Currently prosthetic wearers are left confused and isolated.” Here is a black and white reproduction of the color ad.



Additionally, a series of print ads is scheduled for late summer in major national magazines including *Time*, *Newsweek*, *Business Week* and *Forbes* that will underscore the positive side of O&P care depicting life and mobility affirming efforts and outcomes from O&P professionals.

### **PDAC Reverses Products Coding Review for Six AFO L Codes**

On May 16<sup>th</sup> PDAC published on their web site an Advisory Article revising the AFO/KAFO Policy saying, “No reimbursements for L1930, L1932, L1940, L1960, L1970 and L1971 after September 1, 2012 unless a written Coding Verification Review has been made by the Pricing, Data Analysis and Coding (PDAC) Contractor and subsequently published on the appropriate Product Classification List.”

A small firestorm erupted as the O&P community tried to obtain clarification and answers to a multitude of unanswered questions with respect to the intent, purpose and authority to mandate such a broad-based submission of information, and particularly samples of products that are universally delivered as unique custom devices.

In a letter to Laurence Wilson, Director of the Chronic Care Policy Group for CMS and Dr. Robert Szczys, Medical Director for PDAC, AOPA’s Executive Director, Tom Fise, in addition to requesting a meeting and a delayed effective date, raised a number of issues including the burdensome cost to the O&P community for providing uncompensated samples; the short time frame of two weeks (by June 1<sup>st</sup>) to submit samples so PDAC has 90 days prior to the September 1<sup>st</sup> effective date to review; the inability to receive clarification and answers to questions from PDAC, how a “sample” could be submitted as each device is by definition, different, unique and custom-made for a specific patient; and does publishing a notice on a web site circumvent the

legitimate administrative law processes for rulemaking, notice and comment with the due process protections provided by law.

Subsequently, on July 5<sup>th</sup> PDAC emailed AOPA and published on its web site a notice that the effective date has been deferred and the DME MACs were further reviewing the policy. The deferral was in direct response to AOPA concerns expressed to PDAC and CMS. Following the announcement of the postponement of the effective date, all four DME MACs revised their AFO/KAFO Policy Articles to remove the PDAC coding verification requirement for the AFO codes.

### **VA OIG Report Triggers VA Committee Hearings**

The Office of Inspector General (OIG) at the Department of Veterans Affairs released a report dated March 8, 2012 claiming the “average cost of prosthetic limbs fabricated in VA prosthetic labs averaged \$2,900, while items purchased from vendors averaged about \$12,000.” A footnote in the report explained the difference is generally attributed to vendor costs for materials and profit.

Of course no mention was made of labor, rent, insurance, and a dozen other cost factors incurred by private O&P facilities – none of which are accounted for in a VA facility.

The OIG Report raised enough questions to prompt the House VA Subcommittee on Health to hold hearings May 16, 2012. Board member, Michael Oros, CPO, of Scheck and Siress testified on behalf of AOPA joined by AOPA lobbyist, Catriona Macdonald.

Additional hearings by the House VA Subcommittee on Oversight and Investigation on May 30, 2012 brought Michael Oros back to testify on AOPA’s behalf for another opportunity to present the case for veterans’ access to quality care and preservation of choice and convenience for getting that care. Examples were provided where VA facilities inferred services by private providers might delay care or receipt of a device.

AOPA will continue its effort to keep Congress informed on the challenges veterans face in securing O&P services.

### **Coding Mysteries Addressed in One Day Seminar**

A special training seminar on how to secure product HCPCS codes is scheduled for Tuesday, July 24, 2012 at the Marriott Hotel at BWI Airport in Baltimore, MD. It’s a follow up to last year’s very successful event that delivers answers to these questions:

- How does coding affect product sales?
- When in the product lifecycle should you consider coding?
- Does the name of a device affect payment?
- Who makes the final decision on what devices receive codes?
- Can you get a brand name code?
- Do Medicare codes affect private payors?
- If a new code is issued, how does that code interact with the Medicare allowable for that device?

Expert presenters include CMS representatives, AOPA staff and Coding and Reimbursement Committee members. Register at [www.AOPAnet.org](http://www.AOPAnet.org)

### **National Assembly Round-Up and More**

**National Assembly.** Bigger and better seems to be the rule for AOPA's National Assembly with each successive event reaching higher levels of perfection. Boston, September 6-9 is no exception with up to 37 CE credits available to those attending the combined National Assembly and the NE Chapter Meeting. Exhibitor participation is a good barometer of success and the Hynes Center exhibit hall which is larger than previous years is booked to the four walls. In fact, exhibitor revenues topped the \$1 million mark for the first time in history. As all members know, anything left over after the bills are paid goes straight into supporting the AOPA Advocacy effort to make sure legislation and regulations don't harm patient care, expanded research efforts and education programs such as the extensive offering of online webcasts, videos and white papers.

**Business Management Certificate Program.** There's been growing interest in the developing Business Management Certificate program unveiled at last year's National Assembly which provides business owners, managers and practitioners an opportunity to not only explore crucial business challenges but to also hone the skills to cope with them. AOPA's collaboration with the University of Virginia's School of Continuing and Professional Studies assures a top quality pathway to a Business Management Certificate. Some certificate program credits will only be offered at the Boston National Assembly; others will be available online with credits based on completing quizzes about the subject matter.

**Annual Wine Tasting and Auction.** Under the bigger and better banner, this AOPA PAC and Capitol Connection sponsored event has continued to draw a loyal crowd of wine aficionados who also share the passion of supporting AOPA advocacy efforts. Wine auction and registration proceeds go to either the PAC or Capitol Connection. Register online for the 6:30 pm, Friday, September 7, 2012 event. \$100 of the wine tasting/auction registration fee will be credited toward your first winning wine auction purchase. Donations of wine, cash or objects are still needed. Email [info@AOPAnet.org](mailto:info@AOPAnet.org) for further information on donations or register online at [www.AOPAnet.org](http://www.AOPAnet.org).

**Essential Coding and Billing Seminar.** Everyone loved Seattle as the 2009 site for the AOPA National Assembly so popular demand dictated scheduling one of AOPA's most valuable programs in Seattle, August 6-7, 2012. \$174 per night room rate at the Hyatt at Olive 8 makes it a great value in terms of a learning experience but a wonderful great city to enjoy. Register on line at [www.AOPAnet.org](http://www.AOPAnet.org).

Two final things – we hope you are enjoying our new AOPA In Advance SmartBrief twice weekly newsletter with expanded coverage of information you can use or enjoy and secondly, please be on the lookout for exciting news about the AOPA World Congress which will bring the global O&P community together in Orlando, FL, September 18-21, 2013 at the Gaylord Resort.

Thank you for your support – it has been a pretty good year for O&P on the regulatory front, thanks to your support, but there are still a formidable number of threats out there as further implementation of the Affordable Care Act goes forward. Stick with us!

Sincerely,



Tom Fise, Executive Director