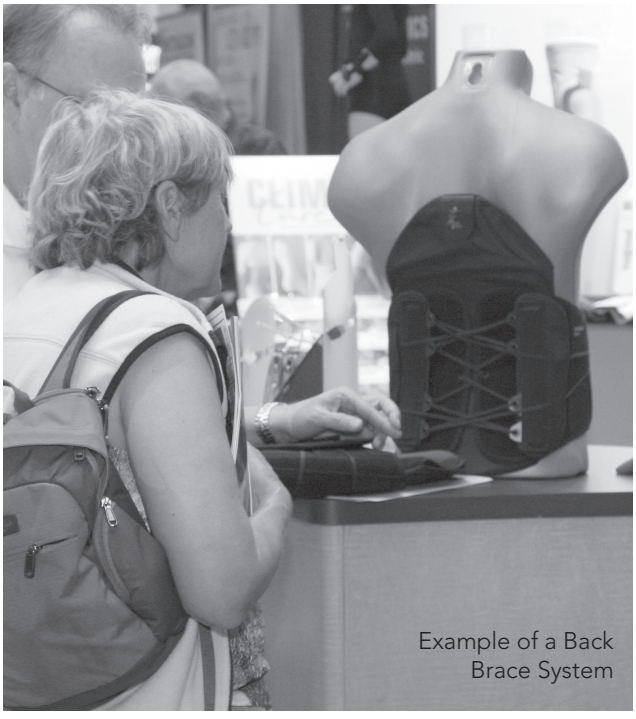
A TOPIC AOPA IS WORKING ON THAT IS IMPORTANT TO THE FUTURE OF YOUR BUSINESS

AOPA Continues Challenging HHS Office of Inspector General for Simplistic and Inaccurate Assertions Regarding L0631 Orthotic Bracing Internet Pricing, Competitive Bidding and Inclusion of Clinical Services

The Core of the Issue

Reports issued by HHS Inspector General Daniel Levinson continue to reveal misunderstandings of how orthotic and prosthetic care is delivered. The December 2012 OIG Report on L0631, an orthotic back brace, is a prime example of misunderstandings, confusion and inaccurate statements. The OIG Report alleged CMS allowed $37 million more in reimbursements for this device in a twelve month period beginning July 1, 2010 than providers paid for the device. This conclusion was based on the OIG looking up Internet pricing for devices devoid of the clinical services accompanying the device, a sampling of 305 claims where the OIG asserts that one third of the providers did not indicate doing any customization fitting and adjustment nor provided use instructions. The Report claimed the device could be purchased on the Internet for $191 while Medicare paid an average of $919. The Report recommended lowering the reimbursement level based on CMS' inherent reasonableness authority or subjecting L0631 to competitive bidding. Neither recommendation is acceptable for O&P patients and AOPA wrote the OIG stating why in a January 8, 2013 letter to Mr. Levinson.



Example of a Back Brace System

Why Is It Important To You?

Well, it's one of those "camel's nose under the tent" situations where failure to stop an incorrect judgment—whether by CMS or by the HHS Inspector General—in their tracks opens the door to continued inaccuracies and further confusion that ultimately affects your ability to provide needed services to your patients. CMS has promulgated a list of what they consider "off-the-shelf" orthoses which qualify for competitive bidding. AOPA's Coding and Reimbursement Committee carefully reviewed all of the 59 CMS candidates to make sure these devices met the statutory definition of an off-the-shelf orthotic requiring only "minimal self adjustment" by the patient. Only fourteen of fifty-nine items on the list meet that statutory definition. Back braces billed under L0631 cannot be delivered to be usable with minimal self adjustment, but rather require clinical care concurrent with delivery of the device. AOPA's review consisting of 479 pages of published evidence on the forty-five devices that do not meet the law's requirements was shared with CMS and made available to AOPA members in March of 2012.

L0631's inclusion as an off-the-shelf orthosis eligible for competitive bidding was clearly refuted with six pages of graphic and descriptive peer reviewed information from the *Journal of Bone and Joint Surgery.*

Then why does the Inspector General in his December 2012 Report and then in a subsequent article that appeared in the March issue of the *AARP Bulletin* repeat his recommendation that the reimbursement be lowered or L0631 be included in competitive bidding?

The only answer that makes sense is that they (CMS and OIG) still lack understanding of how patient care is delivered in the O&P field. It's a never ending education effort that AOPA must be vigilant in pursuing day in and day out.

In a March 13, 2012 letter along with the submission of AOPA's research to Laurence Wilson, Director, Chronic Care Policy Group, responding to the inaccuracies in the CMS list of eligible devices, AOPA said, "We need to underscore that AOPA believes that fixing this very aberrant listing by CMS is a priority of the highest order. The list published by the agency is completely misguided, and its impact on patient care, were it to advance any farther, would be devastating."

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What Is AOPA Doing About This?

As noted, AOPA began the effort with its letter to Laurence Wilson at CMS citing the forty-five items on errant list of fifty-nine items that do not meet the statutory definition of "minimal self adjustment." AOPA responded to the December 2012 OIG L0631 Report on January 8, 2013 reiterating that "On several occasions, both in person and in writing, AOPA has demonstrated to CMS, supported by peer-reviewed published literature, why the inclusion of L0631 in a competitive bidding program would not only be contrary to the statutory definition of an off-the-shelf orthosis, but of at least equivalent importance, may create potential harm to Medicare beneficiaries through the provision of improperly fit devices."

Our letter elicited a response from OIG official Stuart Wright, Deputy Inspector General for Evaluation and Assessment, on April 3, 2013 which stated, "Our report provides CMS with a comprehensive set of data regarding acquisition costs and services that could assist it in lowering the reimbursement amount for L0631. Including the L0631 code in the competitive acquisition program will not preclude beneficiaries from obtaining necessary fitting and adjustment services from suppliers."

AOPA's response on April 19, 2013 to Mr. Wright stated, "any delivery of non off-the-shelf orthoses through competitive bidding, as if the braces were commodities that can be provided without clinical care, is a change from the current statute which would be detrimental to the quality of care for Medicare beneficiaries."

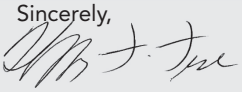
AOPA also responded to the *AARP Bulletin* article authored by Mr. Levinson by writing: "We also believe however, that fairness, accuracy, and completeness in examining the system must occur before allegations of fraud or waste are leveled, and before any specific proposals are made to remedy deficiencies. Unfortunately, sometimes the full story of OIG actions, such as Mr. Levinson's assertions about the costs and clinical services for patients requiring back bracing in his article, do not meet the test for a balanced view or consistent recommendations."

All of the letters referenced and the AOPA analysis of the CMS off-the-shelf list, along with the December 2012 OIG Report, can be viewed at *www.AOPAnet.org/L0631* or by using the Legislative and Regulatory pull down menu on AOPA's home page and click on OIG 6031.

The Bottom Line:

That's what it always comes down to in AOPA's dealings with CMS – the bottom line. And it's more than the dollar bottom line but even more importantly, the bottom line of delivering the kind of quality care that continues to distinguish the O&P field from other healthcare providers. There's no question that O&P providers almost always improve a patient's well being, always bring them hope and almost always bring more mobility and less pain to the patients served, including Medicare beneficiaries.

Sincerely,



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