



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

# "Government Assisted Shoplifting" Has Got To Stop Can't Put Them in Jail, But We Can Make a Public Case for Them Being There

### The Core of the Issue

There has been no end of agony associated with the RAC, CERT audits and the prepayment reviews. AOPA has kept you informed of our meetings with CMS Administrator Tavenner, members of Congress and their staff along with HHS Inspector

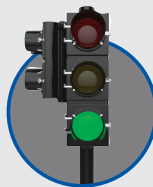


**Marilyn Tavenner**  
Acting Administrator  
Chief Operating Officer

General, Daniel R. Levinson, CMS Program Integrity (fraud prevention) officials and communications with Medicare contractors and their supervisors within CMS. So far, nothing has relieved the burden on O&P providers. Administrator Tavenner promised a "middle ground" solution. Her solution is a Rulemaking Procedure to clarify everything. It is well intentioned but could take as long as one year. That's really not much help when the cash flow squeeze on providers and their suppliers is becoming terminal.

### Why Is It Important To You?

It's important to everyone in the O&P community because patients aren't getting care, providers aren't getting paid when they can provide care and suppliers are left holding the bag of unpaid receivables as well. Kudos to David Hansford, CPO of Mountain States Prosthetics for coining the term "government assisted shoplifting" in describing the confiscatory practices CMS contractors now pursue. O&P is not alone – Medicare "saving" \$750 billion promised in support of the Affordable Care Act is really intended to be financed almost solely by "cuts" in payments to providers. Nothing AOPA or anyone else has done so far has worked and all options have been exhausted but one.



### What Is AOPA Doing About This?

AOPA's legal counsel on this matter has been laying the groundwork to sue CMS for changing the rules without following proper rulemaking practices. Assuming this lawsuit is filed by AOPA on your behalf, it will be accompanied by a request to the court for a Temporary Restraining Order requiring CMS to stop the RAC and CERT audits and revert to policies in place before the "Dear Physician Letter" that was triggered by a misleading and error ridden Office of the Inspector General report that started all this insanity. AOPA's legal counsel is one of the few experts who have successfully sued CMS over unfair policies and practices. AOPA's Board has given him a green light to prepare the legal documents for a suit on your behalf. The Board's decision recognized the odds are heavily stacked against winning and in these current and dire straights, with other remedies foreclosed, we have no choice.

Right now AOPA and legal counsel are building a file of case histories that graphically depict the excessive and draconian practices that are demolishing traditional O&P patient care. Typical was the email from a long time member sadly reporting that after 20 years, he's closing the doors. He's moving to another state and will pursue his career as an employee of a Veteran's Administration patient care facility. Six employees lost their jobs as well.

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Litigation is not being undertaken lightly. Few if any lawsuits against Uncle Sam win, perhaps 5 percent or less. Yet, the confiscatory actions of the auditors have ignored fairness; the standard procedures intended to protect its citizens, as well as compromising patient care. When you've tried every possible way to resolve a problem, in the end you have to take a route that's risky and expensive. Estimates put the cost of the lawsuit at \$500,000 or more. But if litigation is the only remedy left, then there is certainly agreement that the cause warrants the expense.

How many providers will have to go out of business before common sense takes over and we can return to the business of caring for patients instead of being in the business of appealing legitimate claims arbitrarily denied without basis?

Here's part of the sad email we received from our longtime AOPA member responding to the AOPA email encouraging him to attend the recently concluded March 12-13 Policy Forum in Washington... "Yes, I think a lawsuit is needed. We fought closing for 9 months. We had great service and our patients loved us. There was no logic on the rejection of services and payment. I never thought Medicare would give up on a much needed service."

How many Medicare patients will receive delayed treatment and/or less advanced technologies and lower overall quality of care because of paperwork quibbles that have nothing to do with fraud and abuse?

How many suppliers will also be in financial straits because their customers aren't getting paid and they aren't getting paid?

How many millions or billions in extra costs over the long run will Medicare incur because Medicare beneficiaries aren't receiving timely O&P intervention and treatment?

Those are questions the anticipated AOPA lawsuit should bring out into the open. Policy makers, legislators and patients have to know the true story of how government run amuck can endanger patient health, jobs and thriving businesses.

Thanks for your loyal support that made it possible to stand up and say, "We're mad as hell, and we're not going to take it any more!" If nothing intervenes to break this destructive cycle, spawned by CMS and its contractors, and therefore this litigation proceeds, win or lose, O&P will have made its voice heard loud and clear.

Sincerely,



Thomas F. Fise, JD  
AOPA Executive Director



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For more information, contact us at [worldcongress@AOPAnet.org](mailto:worldcongress@AOPAnet.org) or visit [www.opworldcongressusa.org](http://www.opworldcongressusa.org).



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