



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

# Three Meetings Illustrate AOPA in the Crossfire as Government Crafts Policies/Directions Impacting Future of O&P



CMS Administrator Marilyn Tavenner and Thomas F. Fise, JD

We often tell our members about AOPA fighting this or that battle on behalf of the manufacturers, patient care facilities and patients in O&P, and how but for these efforts some peril might have befallen our industry. And when we do, I am always hoping that our members don't think we have gotten swept away in some mystic

cloud of grand self-importance. That can certainly be an occupational hazard for those of us who, for better or worse, work "inside the beltway" around Washington D.C, each day! But this month, as we worked our way through three meetings within one week, I am struck by how the results provide a pretty unique, readily comprehensible example of just what it is we do for our members, how that can contribute dramatically to your bottom line as well as your survival, and why it is critically important that the critical mass of O&P continue its solid support for AOPA so we can keep doing this kind of work for you.



### The Core of the Issue—Three Meetings Advocating for Your Future

**1)** On Tuesday morning, October 9, AOPA's representative Catriona Macdonald, O&P Alliance Counsel Peter Thomas, Esquire and I met for two hours with Acting Director of the Prosthetic and Sensory Aids Services (PSAS) of the VA, Dr. Lucille Beck. She was joined by two other members of her team, Joseph Miller, Ph.D, National Director, Orthotic & Prosthetic Services, PSAS Central Office Staff and Dr. Joseph Webster, the Medical Director for matters relating to PSAS services to Vets. There has been a great deal of concern and confusion—in the O&P field, among vets, and within Congress about changes to the VA's procurement system for prosthetics. Questions like: (a) how did this \$3,000 requirement for warrant officer action come about; (b) how readily available are new advances in O&P technology becoming available to Vets; and (c) what justification can there be for the VA not universally recognizing the Vet's right to choose his/her prosthetist as affirmed in the proposed Veteran's Bill of Rights legislation, H.R. 805. Dr. Beck and her colleagues responded: (a) that the new VA procurement policy imposes the warrant officer approval requirement for any purchase of any product in excess of \$3,000 total; (b) we reviewed the testimony of VA Undersecretary for Medical Affairs, Dr. Robert Petzel, claiming that new technologies are readily available—that the procurement policies remain consistent with the VA's commitment to deliver to the Vet exactly what the physician ordered, and relates only to how that is accomplished; and (c) VA explained that they are now harkening back to a 27-year old statute, Public Law 99-272 on which VA stakes its revised position that Vets do not have the right to select who delivers care to them, unless and until the VA chooses to give the Vet that right. Obviously, we didn't agree with the VA on a fair portion of their responses, but getting to the root of their rationale is important to achieve understanding for all of us.

**2)** We have all been exceedingly concerned about the new physician documentation requirements and the RAC audits. AOPA has been involved in at least a dozen meetings on this topic over the past year—with OIG, Congress, and a variety of CMS officials. At one of those meetings,

*(Continued on page 2)*

(Continued from page 1)

representatives from the group at CMS that has responsibility for the DME MACs and audit contractors had offered to receive and review samples of what AOPA considered to be “egregious claims denials.” On October 10, 2012, we met with Mr. George Mills, Director, Provider Compliance Group, Office of Financial Management and Dr. Susan Miller, M.D., Medical Officer, Division of Items and Devices, Coverage & Analysis Group, Center for Clinical Standards and Quality, who reported back on the eight claims AOPA had submitted which they had reviewed. What resulted was not a very happy meeting, with the CMS folks conceding that “no” they had no evidence to indicate any fraudulent activity with any of the eight claims, but that they believed all eight were rightfully rejected because some documentation was not present or some other relatively minor flaw was noted. It prompted us to come away with the belief that this crusade for more physician documentation is tantamount to a “gotcha” game—the agency wants more and more records so they can plow through dozens of pages of documents until they find something they can cite as a reason to overrule the physician’s judgment or assessment of his/her patient, and substitute a different view from the government that purportedly justifies Medicare NOT making payment.

**3)** On Monday, October 15, AOPA had a crucial meeting on the physician documentation/RAC/pre-payment audits issue with the CMS Administrator Marilyn Tavenner, the head of the Medicare/Medicaid program which pays out over \$800 billion in claims each year. AOPA has explored every option regarding these devastating audits, including consideration of possible litigation. But before we seriously considered that radical step, we wanted one final meeting to remind the Administrator that she had said CMS needed to find a “middle ground” to resolve this issue. Two AOPA Board members and two members of our AOPA lobbying team joined me for this meeting, and we had a very frank discussion with the Administrator about how these audits and the resultant pressures on cash flow are bringing some small businesses in O&P to the verge of insolvency. Administrator Tavenner listened as we asked that they completely drop pre-payment audits, that instead of locking up all the payment for the entire claim, that CMS pay on all portions not in dispute while the remainder is looked at. AOPA representatives reiterated that the OIG’s errant view that physicians were the patient’s “go to” resource if the patient requires repairs or adjustments to their prosthesis—that needs to be corrected. There needs to be a return to the prior policy of a physician prescription plus a detailed work order signed off on by the physician as sufficient. Well, we didn’t get an answer on the spot, but we did receive the pledge from Administrator Tavenner to get us an answer, a proposed solution by December 1.

### Why Is It Important to You?

All of these meetings had one common theme—interventions to try to break down barriers and impediments that government has erected between the service the patient needs and receives and the reimbursement/payment for those services. These are questions that can have a grievous impact on the future of your business and our industry. We need a streamlined system to get Vets the care they need and desire, and have them paid for. We need new rules relating to audits—rules that recognize legitimate responsibility for government to act as a good steward of substantial resources, but without turning the enterprise in a game of “gotcha” where government rejects claims, without respect to fairness, just because they often can and do get away with it. We need a decision at the highest level to return to the time when the Medicare system’s means of paying for O&P was fair, and made sense without holding both the patient and the provider hostage to false, excessive bureaucratic expectations.

### What Is AOPA Doing About This?

Well, you have already seen that we have taken these concerns—your concerns that is—to the top, to the key decision makers who if they understand these situations thoroughly, should be able to help arrive at a solution which retains the viability for the small businesses that comprise O&P, their creativity, ingenuity and unparalleled commitment to patient care.

These are examples of what AOPA is trying to do for you each day. Some days we have more success than others, but we keep fighting relentlessly. For our part, doing this demands resources and support—the O&P field and your patients deserve the best, but we also need to hammer home that **AOPA can’t fight and win these major battles unless virtually every company in the field IS an AOPA member and is contributing to the solution**—nothing less will do to assure your fight to serve your patients and receive a fair compensation for those incredibly valuable services you deliver each day. So next time you speak to a colleague whose company is not an AOPA member, do them and yourself a favor by giving them a copy of this letter and telling them how critical it is for them to join AOPA.

Very truly yours,



Thomas F. Fise, JD  
AOPA Executive Director