

AOTA's Federal Agenda: Challenges to Medicare, and More

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With a second-term president, a divided Congress, and critical fiscal issues, Washington is churning in 2013, and occupational therapy is in the whirlpool with just about every other interest group. There have been victories, such as the extension of the cap exceptions process, and new opportunities have emerged, such as the reinvigorated interest in mental health.

Many legislative issues remain on AOTA's federal agenda, including expanding occupational therapy's role in home health, elevating the chief of the Army Medical Specialist Corps to a one-star general, and maintaining occupational therapy's role in special and regular education. Of course, issues such as sequestration continue to keep things interesting and likely very challenging.

But the challenges to Medicare may be the most significant we have seen in a long while. Medicare is the major source of payment for occupational therapy. In 2011, \$1.1 billion was spent on 1.1 million beneficiaries for Medicare outpatient occupational therapy (by comparison, \$4.1 billion was spent on 4.3 million beneficiaries for Medicare outpatient physical therapy in 2011). The Medicare Payment Advisory Commission (MedPAC) recently noted that therapy spending has increased by about 50% over the last 5 years; this has brought more scrutiny to therapy as policy makers search for ways to deter and control unwarranted spending.

There have been several long-standing questions surrounding therapy, most arising since the institution of the cap by the Balanced Budget Act of 1997:

- Does Medicare know why beneficiaries get the amount, frequency, and duration of therapy indicated?
- Is there a rationale for increasing use of therapy or is there overutilization?
- Is the Medicare Physician Fee Schedule, which bills primarily in units of 15 minutes of treatment, the best system for payment of therapy?

Also of note for the occupational therapy profession during this challenging period in Washington are provisions within the Middle Class Tax Relief and Job Creation Act (MCTRJCA), passed in early 2012. This changed the exception process to include a "manual medical review" (MMR) for all claims over \$3,700, established a process to capture functional data about therapy recipients, and required the MedPAC to examine therapy issues and report to Congress.

The MMR process was put in place to supplant the previous exception process, which Congress deemed too weak. AOTA has been advocating with the Centers for Medicare & Medicaid Services (CMS) in visits and communication about the problems with the MMR process encountered by therapy practitioners. AOTA is working with CMS to respond to the most recent communication, which suggests that CMS will institute an onerous process of prepayment approval. One of the key issues is how the 10-day requirement in the statute for answers to providers about coverage to providers will be met.

It is important to note that these deliberations have focused on the increased costs of therapy. Although during deliberations some commissioners expressed support for therapy's outcomes, little examination of out-

comes was done. Part of the problem is that CMS collects limited data. There have been concerns expressed for many years about how the CPT codes do not represent the content of therapy thoroughly; codes such as therapeutic activities and therapeutic exercises are more frequently used than the cognitive or activities of daily living codes. Furthermore, there has been no data collection on outcomes of therapy.

These data issues are currently being addressed. First, the MCTRJCA required establishing a system for collecting functional data. This began January 1, 2013, as a test but will become mandatory on July 1, 2013. Presumably, this will provide some additional data. Meanwhile, CMS is also analyzing functional data collected as part of the Developing Outpatient Therapy Alternatives project. But use of all of this data to develop a new payment system is in the future, and cuts are desired now.

We have many allies in Washington who understand the important role of occupational therapy in improving and maximizing function in people's daily lives. But therapy is being besieged on multiple fronts because of perceived overgrowth and overutilization of therapy services in Medicare. In this difficult environment, practitioners must continue to use their best clinical judgment when making decisions about providing occupational therapy services, and the legislative and regulatory staff of AOTA will continue working hard to protect access to your much-needed services. ■

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