

State Legislative Forecast

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Several state occupational therapy associations this year will amend their practice acts, plan for licensure efforts, or monitor the efforts of other professions to expand their scope of practice. States will continue to see legislation to mandate coverage for treating autism spectrum disorders (ASDs). Also continuing this year will be efforts by state governments to implement the federal health care reform law, and possible cuts to Medicaid as an effort by states to control spending.

HEALTH CARE REFORM

Major health care reform, as envisioned by the Affordable Care Act (ACA), passed in 2010. Recent guidance from the U.S. Department of Health and Human Services (HHS)—which is charged with putting the ACA into effect—indicates that state policymakers will control much of how the law is implemented, making state occupational therapy associations the front guard on changes that could significantly affect occupational therapy.

As part of ACA, HHS must define essential health benefits (EHB), which will include 10 general categories of diagnostic, preventive, and therapeutic services. Notably, rehabilitation and habilitation services and devices are also considered essential benefits, due in large part to the advocacy efforts of AOTA and our coalition partners.

HHS proposes that states select from specific existing plans to create a “benchmark” plan that would serve as the EHB package, with insurers able to either adopt the scope of services and limits of the state benchmark, or vary the services of offered plans within the parameters set by HHS. With major decisions being made every day on

critical provisions of the ACA, AOTA is putting in place supports to enable state associations to be part of the solution.

MEDICAID

Coverage for occupational therapy for adults has been directly targeted in many states because the service is designated as an “optional” service under federal law. It is important for state associations to be aware of any proposals to cut occupational therapy. Many states have large coalitions working on issues like Medicaid, disability programs, social services, and other support programs, and some state associations have worked very successfully with these coalitions to fend off cuts.

STATE REGULATION OF OCCUPATIONAL THERAPY

Occupational therapists are licensed in 48 states, the District of Columbia, and Puerto Rico. Colorado and Hawaii register occupational therapists. Colorado expects to move forward with licensure efforts in 2013. Occupational therapy assistants (OTAs) are licensed in 47 states, the District of Columbia, and Puerto Rico. Colorado and Hawaii do not regulate occupational therapy assistants. Last year, Indiana became the 47th state to license OTAs, and New York enacted legislation that will trigger rulemaking in the state department of education to define practice by OTAs, including clearer supervision requirements as well as education, experience, and examination requirements. Proposed rules are expected to be published for comment in February or March 2012.

SCOPE OF PRACTICE

Athletic trainers are actively pursuing legislation that would greatly expand their scope of practice, including who

and what they are able to treat and to be reimbursed for.

Recreational therapists have continually proposed legislation to define recreational therapy using language remarkably similar to the definition of occupational therapy. Although recreational therapists are licensed in only a handful of states, additional legislation is expected this year and has already been reintroduced in New York.

State physical therapy chapters are being encouraged to adopt the American Physical Therapy Association’s *Guide to Physical Therapist Practice*. Of concern is context addressing functional training that is not clearly defined, potentially misleading consumers and encroaching on occupational therapy’s traditional domain.

INSURANCE COVERAGE FOR AUTISM

Autism Speaks, a national organization dedicated to addressing problems related to ASDs, has developed model legislation that recognizes the important role of occupational therapy in treatment. AOTA has worked with state associations in support of mandate initiatives that include coverage for occupational therapists, and a number of states should expect to see mandated coverage bills. In total, 29 states have enacted autism insurance reform legislation, 23 of which include occupational therapy.

Although the 2012 legislative session will be challenging, AOTA and state associations are working hard to ensure the profession’s continued growth. Your membership in AOTA and your state association provides us with the resources to actively engage in these issues on your behalf. ■

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