

April/May Federal Legislative Update

Save the Date! AOTA Capitol Hill Day 2012- September 24

Make your plans to join your colleagues from around the country to advocate for OT. Help us make Hill Day 2012 AOTA's largest grassroots advocacy day ever. Check <u>AOTA's Legislative</u> <u>Action Center</u> for additional details and feel free to contact <u>fad@aota.org</u> for more information.

Support the Occupational Therapy Mental Health Act

On December 23, 2011 Representative Paul Tonko (D-NY) along with Representative Jan Schakowsky (D-IL) introduced the Occupational Therapy Mental Health Act (HR 3762). This important measure will make occupational therapists eligible to participate in the National Health Services Corps [NHSC] Scholarship and Loan Repayment Programs as behavioral and mental health professionals.

AOTA has been successful in securing support of the Mental Health Liaison Group (MHLG) a leading national coalition focused on mental health issues. Over 34 members of the group have signed onto a letter supporting the HR 3762 which will be circulated on Capitol Hill.

Securing the support of the broader mental health community is a significant step in AOTA's efforts to advance occupational therapy's role in the provision of quality mental health services. Visit <u>AOTA's legislative action center</u> to urge your members of Congress to support this critical issue

Make Occupational Therapy an Initiating Service

Representatives Charles Boustany (R-LA) and John Lewis (D-GA), have introduced the Medicare Home Health Flexibility Act, allowing an occupational therapist to perform the initial and comprehensive assessment in Medicare Home Health pursuant to a physician's order.

AOTA staff is working aggressively to secure strong bipartisan support for this legislation, specifically focused on the two committees of jurisdiction in the House of Representatives (Energy and Commerce and Ways and Means. Over the past weeks AOTA has met with several key members of both committees to build momentum towards possible inclusion in an end of the year Medicare package.

This has been an issue for over 30 years and needs to be addressed to insure that beneficiaries have access to the most appropriate skilled therapy service in the timeliest and appropriate manner possible.

The American Occupational therapy Association (AOTA) continues to work towards passage of the <u>Medicare Home Health Flexibility Act</u> (H.R. 2468) to remove a long standing problem for the profession. <u>Visit AOTA's legislative action center</u> and advocate today.

Medicare Part B Outpatient Therapy Caps

AOTA in concert with the American Physical Therapy Association (APTA) and the American Speech-Language Hearing Association continues it work with representatives from the Centers for Medicare and Medicaid Services (CMS), the Medicare Payment Advisory Commission (MedPac), as well as staff from the House Ways and Means Committee and the Senate Finance Committee to discuss possible long term alternatives and solutions to address the Medicare Part B outpatient therapy caps.

The American Physical Therapy Association (APTA) has proposed a new Alternative Payment System that would move away from timed codes and better reflect patient complexity and the intensity of the services provided by the therapist. AOTA, ASHA and other stakeholders are reviewing the proposal. You can read more about APTA's proposal at: http://www.apta.org/APS/

The Medicare Part B Outpatient Therapy Cap Exceptions Process Extended Through 2012

AOTA achieved yet another victory in achieving an extension of the exceptions process through the remainder of 2012. The House and Senate have passed the Middle Class Tax Relief and Job Creation Act of 2011 (P.L. 112-96) that extends the Medicare Part B Outpatient Therapy Cap Exceptions process through December 31, 2012. The law also avoids the scheduled 27.4% cut to the Medicare Physician Fee Schedule and extends current payments through 2012.

AOTA worked closely with leaders in both the House and Senate to achieve the extension of the exceptions process and succeeded in shaping several provisions in the bill. While the exceptions process has been extended through December 31, 2012 the legislation also creates some changes to the process of which AOTA members should be aware:

- The KX modifier must now be used on all claims exceeding the statutory level of the cap which is \$1880 for 2012. Congress included this requirement because they noted that CMS contractors were not always requiring use of the modifier on claims exceeding the cap. The KX modifier is intended to note spending beyond the level of the cap and, more importantly, to attest to the medical necessity of those services.
- Effective October 1, 2012 all therapy claims above and below the level of the cap must include the national provider identifier (NPI) of the physician responsible for certifying and periodically reviewing the plan of care.
- Also effective October 1, 2012 all claims exceeding \$3700 will be subject to what the new law states is a "manual medical review process." The bill notes that this process should be similar to the manual review under the original exception process instituted in 2006. Only about 5% of Medicare beneficiaries receiving therapy exceed \$3700 in therapy per calendar year. While the 2006 manual review process required precertification it is AOTA's understanding that precertification was not Congress's intent nor did CMS want to institute precertification of therapy claims at any level. AOTA is working to clarify Congressional intent. The law requires CMS to consult with stakeholders regarding development of the review process and AOTA will be at the table.
- No later than October 1, 2012 the therapy cap of \$1880 with exceptions will be applied to hospital outpatient department (HOPD) settings. This cap however will expire on December 31, 2012. HOPD settings were exempted from the cap to allow a safety net for beneficiaries if and when other outpatient settings were subject to the cap. Extending the temporary cap to HOPD with exceptions creates a uniform system of utilization control across all outpatient settings and does not restrict access to medically necessary care. Initially a permanent HOPD cap was proposed but AOTA's leading role in opposition resulted in this important victory that protects patient access. In addition, the temporary cap with exceptions does not create further financial barriers to action on the cap in the future that would have been created by a permanent cap on HOPD settings.
- The legislation also requires two reports on outpatient therapy to be completed in 2013. Congress directs the Medicare Payment Advisory Commission (MedPAC) to complete a report by June 15, 2013 that recommends payment reforms that better reflect acuity, condition and the therapy needs of the patient. MedPAC is also instructed to include an examination of private sector initiatives related to therapy benefits in their report. The Government Accountability Office (GAO) is also directed to issue a report regarding the manual medical review process instituted by the law. The report must detail the number of beneficiaries subject to the process, the number of reviews conducted and the outcome of the reviews.
- Finally on January 1, 2013 CMS is required to begin collecting additional data on therapy claims related to patient function during the course of therapy in order to better understand patient conditions and outcomes. The use of the word "function" presents opportunities to showcase the results of occupational therapy.

AOTA believes that the legislation is a step forward in identifying an alternative payment system for outpatient therapy that will result in elimination of the arbitrary therapy cap. While several changes are included to the exceptions process, a path to accessing medically necessary care will be available for all Medicare beneficiaries and for the providers serving them. Additional information regarding implementation of the enhanced exception process will be available as CMS releases additional information. AOTA will provide guidance to our members to ensure their Medicare clients can continue to receive the right amount of occupational therapy at the right time so that they can continue to live life to its fullest.

Supreme Court Decision on Affordable Care Act to be reached in June

The Supreme Court of the United States (SCOTUS) is expect4ed to reach a decision sometime in June to determine several constitutional issues related to the Affordable Care Act (PL 11-148). The decision of the court will determine the fate of the Affordable Care Act and ultimately the future of the entire health care system.

A quick rundown of the 4 constitutional questions:

- 1. Is the individual mandate requiring nearly all American to purchase insurance Constitutional?
- 2. Is this coverage Mandate equivalent to a tax?
- **3.** Can the individual mandate be "severed" from the rest of the law? If this is not the case the entire Affordable Care Act would need to be struck down if the mandate is determined to be unconstitutional
- 4. **Is the Medicaid expansion constitutional?** Critics hold this provision should be considered a coercive measure by the Federal government to force states to cover new populations in order to receive Federal Medicaid funding.

Based on the oral arguments and questions asked by the Justices it remains unclear how the court will rule on these issues

AOTA Works to Secure Falls Funding

On May 22 AOTA staff and the National Council on Aging met with Senator Daniel Inouye (D-HI) office to discuss falls, falls prevention and falls prevention funding and securing \$10 million for elder falls prevention in the Prevention and Public Health fund, in addition to the current \$2 million appropriation for the CDC.

AOTA along with the falls free coalition will continue to work with Senator Inouye and other key members of the House and Senate to secure adequate funding levels in future federal budgets for falls prevention and to advance the overall falls free agenda.

Visit the <u>National Council on Aging's (NCOA)</u> web-site for additional information regarding falls, falls prevention and our current advocacy efforts

AOTA Supported Legislation

AOTA Working Towards Passage of the AMSC Bill

AOTA is working in Coalition with the American Physical Therapy Association (APTA), the American Academy of Physician Assistants (AAPA), and the American Dietetic Association (ADA) to pass Legislation to modify the appointment and grade of the Chief of the Army Medical Specialist Corps to the grade of brigadier general.

This legislation is critical to insure that the practitioners of the Army Medical Specialist Corps, who are so critical to the provision of high quality, effective care, have equal representation in decision making in the Army Medical Department as other health corps.

Senator Tim Johnson (D-SD) has introduce this legislation in the Senate and AOTA in concert with the other organization is working to secure introduction it the House of Representatives and to secure bi-partisan support in both chambers of Congress. Visit <u>AOTA's legislative action</u> center for additional information and to advocate in support of this important issue.

Frontline Health Care Providers

Representative Bruce Braley (D-IA) has introduced the Access to Frontline Health Act (H.R.531) to establish and carry out a Frontline Providers Loan Repayment Program to provide loan repayments in exchange for a health professional, including occupational therapy practitioners, providing frontline care services for two years in a designated scarcity area.

This legislation will help address shortages of qualified occupational therapy practitioners as well as providing clients in shortage areas with access to necessary and critical services.

Visit <u>AOTA's Legislative Action Center</u> and urge your member of Congress to support this important legislation.

AOTA Opposed Legislation

Oppose the Athletic Trainers Access to Medicare Act

The Athletic Trainers Equal Access to Medicare Act (H.R. 2785) was recently introduced in the House of Representatives by Representative Edolphus Towns (D-NY). The legislation would

allow non-qualified athletic trainers to bill the Medicare program for therapy services "incident-to" the physician's professional services, thereby eroding the May 2005 Centers for Medicare and Medicaid Services (CMS) regulations that restrict the billing of therapy services under Medicare to those qualified to deliver physical therapy, occupational therapy, and speech language pathology services.

H.R. 2785 would allow the billing of services provided by athletic trainers to the physician fee schedule and would apply the therapy cap limitations to these services. AOTA strongly opposes this legislation and encourages members of Congress to do the same. There is currently no Senate companion bill to H. R. 2785.

Visit <u>AOTA's legislative action center</u> and urge your members of Congress to oppose this potentially harmful legislation.

Recent Activity

Senate Finance Committee

Representatives for the American Occupational Therapy Association attended a roundtable discussion held by the Senate Finance committee focused on Medicare physician payments. The discussion was largely focused on the scheduled reduction to the physician fee schedule due January 1, 2013.

The conversation included talk of a permanent repeal of the flawed SGR payment formula, bundled payments, and the impact of the AMA's multispecialty Relative Value Update Committee (RUC) on physician payments.

Participants in the discussion included former CMS Administrator Tom Scully, Mark McClellan, Senior Fellow, Brookings Institution; Mr. Bruce Vladeck, Senior Advisor, Nexera, Inc.; and Ms. Gail Wilensky, Senior Fellow, Project HOPE.

AOTA will continue to work with the Finance Committee as it considers Myriad issues including the SGR payment formula and the Medicare Part B outpatient therapy caps, both set to expire at the end of the year.

Senate Health Education Labor and Pensions (HELP)

AOTA staff attended a Senate HELP committee hearing on future opportunities to reform our health care delivery system.

The discussion varied considerably including discussion on the value of prevention, the role and effectiveness of Accountable Care Organizations (ACO), total health care spending as a percentage of Gross Domestic Product (GDP), and increasing primary care costs.

AOTA will continue to work with the HELP committee as they debate issues pertinent to the profession of occupational therapy.

Arthritis and Physical Activity

Federal Affairs staff attended the Arthritis Foundation Capitol Hill briefing to release the new report - *Environmental and Policy Strategies to Increase Physical Activity Among Adults With Arthritis* - a resource to help make physical activity convenient and accessible for adults with arthritis.

Please visit http://www.arthritis.org/public-health-physical-activity-report for more information and to obtain copies of the report.

Congressional Mental Health Caucus

The Congressional Mental Health Caucus hosted a Capitol Hill Hearing focused on the current delivery of mental health services in the United States Armed Services.

AOTA staff was on hand to hear representatives from each branch of the military discuss the steps each branch is currently taken to insure military personnel are receiving adequate and effective mental health services.

At the conclusion of the briefing AOTA staff had a chance to chat briefly with several members of the Mental Health Caucus regarding OTs role in the provision of quality mental health care and our current efforts in support of the Occupational Therapy Mental Health Act (H.R. 3762)

Sequestration

The House of Representatives recently passed the Sequester Replacement Act of 2012 to alter the debt ceiling deal signed into law by President Barack Obama. This legislation sponsored by Representative Paul Ryan (R-WI) and passed with the support of 183 House Republicans is an attempt to avoid automatic cuts to defense spending included in the Budget Control Act.

Under this legislation budget cuts would shift from Defense to reduction in funding to other programs including the Affordable Care Act (P.L. 111-148), and block grants for social services funding.

AOTA will continue to monitor the Sequestration process to identify and address potential funding cuts that could be adversely affect the profession and beneficiary access to critical OT services.