

July 15, 2010

Peter Budetti, MD, JD
Deputy Administrator, Center for Program Integrity
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Mail Stop 314G
Washington, DC 20201

Re: Orthotics and Prosthetic Services Provided by Occupational Therapists and Physical Therapists under the Medicare Program

Dear Dr. Budetti:

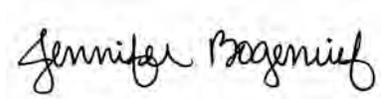
The American Occupational Therapy Association (AOTA), American Physical Therapy Association (APTA) and American Society of Hand Therapist (ASHT) represent the professional interests of occupational therapists and physical therapists, many of whom provide services to Medicare beneficiaries across the country under Parts A and B of the Medicare program. We learned from an industry publication that you recently met with representatives from the Orthotics and Prosthetics Alliance (O&P Alliance). As the CMS Deputy Administrator of Program Integrity, we felt you should have information about orthotics and prosthetic services provided by occupational therapists and physical therapists under the Medicare Program.

In 2009, representatives from AOTA, APTA and ASHT met with Sandra Bastinelli, Director of the Division of Medical Review & Education at CMS, and her staff to discuss qualifications and education of licensed occupational and physical therapists to furnish, fabricate and train in the use of certain custom fabricated orthotics and prosthetics. In follow up to the meeting, we sent Ms. Bastinelli a letter along with materials detailing the qualifications of occupational and physical therapists, the role of occupational and physical therapists in providing orthotics and prosthetic services to their patients, a list of L-codes that best represent the orthotics services furnished by occupational and physical therapists and recommended revisions to CMS' DMEPOS Quality Standards (see attachments). We urged CMS to continue to define occupational therapists and physical therapists as qualified providers of orthotic and prosthetic services in order to ensure Medicare beneficiaries access to medically necessary and appropriate services. We would be happy to meet with you to offer our perspective on the qualifications possessed by occupational therapists and physical therapists to provide orthotics and prosthetic services.

We have enclosed copies of the letter and materials sent to Ms. Bastinelli. We would be happy to provide further information and look forward to meeting you in

person if that is necessary to discuss these issues. Should you have any questions or comments, please contact Jennifer Bogenrief at (301) 652-2682 ext. 2017 or via email at jbogenrief@ota.org.

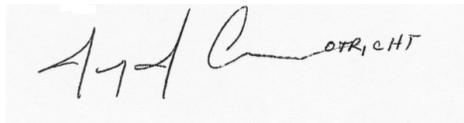
Sincerely,



Jennifer Bogenrief
Senior Regulatory Analyst
American Occupational Therapy Association



Gayle Lee, Esq.
Director, Regulatory Affairs
American Physical Therapy Association



Jerry Coverdale, OTR/L, CHT
President Elect, American Society of Hand Therapists

October 30, 2009

Sandra Bastinelli, Director
Division of Medical Review & Education
Program Integrity Group, Office of Financial Management
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

**Re: Orthotic and Prosthetic Services Provided by Occupational Therapists
and Physical Therapists under the Medicare Program**

Dear Ms. Bastinelli:

The American Occupational Therapy Association (AOTA), American Physical Therapy Association (APTA) and American Society of Hand Therapists (ASHT) appreciate the opportunity to provide you with additional information regarding the specific services provided by occupational therapists and physical therapists in furnishing and fabricating custom fabricated orthotics and temporary prosthetics to beneficiaries under the Medicare Program. Although the enclosed documents are provided by individual organizations, please understand that our intent is that the all policies should apply to occupational therapists and physical therapists equally.

Enclosed are the following materials upon which we respectfully request that the Centers for Medicare and Medicaid Services (CMS) base the future regulation required pursuant to Section 427 of the Benefits Improvement and Protection Act of 2000 (BIPA). These materials are being provided as requested by CMS during our meeting on February 6, 2009.

- Tab 1: AOTA, APTA, and ASHT Recommended Revisions to CMS DMEPOS Quality Standards- Appendix C (Custom Fabricated, Custom Fitted and Off-the-Shelf Orthotics);
- Tab 2: L-Codes Billed under the Medicare Program by Occupational Therapists (Specialty Code 67) and Physical Therapists (Specialty Code 65) excerpted from the Part B Extract Summary System (BESS) Data File for 2007;
- Tabs 3-5: Background Information Regarding the Provision of Upper and Lower Extremity Orthotics by Therapists.

We decided to provide CMS with revisions to Appendix C of the DMEPOS Quality Standards because we found the current language and organization of the “Definition of

Terms” section to be unclear and potentially misleading. Rather than all being distinctly different types of devices, three of the orthotics devices described under the definitions are actually types of “custom fabricated” devices. Our objective was to make that distinction clear by breaking those models out as a sub-category of custom fabricated devices. As you will see, we also altered the language of the definitions to fit more accurately with current practice terminology and clinician understanding of the different types of devices as well as the basic definition of orthotic devices. We are happy to answer questions about these definitions upon request.

With regard to the L-Code listing, the organizations agreed that the best representation of the orthotics services that occupational therapists and physical therapists furnish to Medicare beneficiaries would be to provide CMS with its own Part B Extract Summary System (BESS) Data File for 2007. We have extracted the L-codes billed under our specialty codes of 65 and 67 for ease of CMS review. We have also removed all codes that have been deleted since 2008. In addition, after 2007 new L- codes were introduced into the HCPCS system that did not exist as part of the BESS data file for 2007 and we have added to the list any new codes not previously captured. AOTA, APTA, and ASHT assert that occupational therapists and physical therapists are appropriately trained and educated to provide orthotics under the L-codes in the list provided. Finally, for the L-codes CMS ultimately chooses to designate as custom-fabricated orthotics pursuant to section 427 of BIPA, we request that CMS provides a user-friendly process for L-code review, addition, deletion, and modification as the practice area evolves over time. AOTA, APTA, and ASHT request that a representative from each of our organizations be permitted to provide comment as part of such a code review process.

By way of background, occupational therapists and physical therapists have the requisite training, credentialing and educational experience to appropriately furnish and fabricate upper and lower extremity orthotics and temporary prosthetics (typically, these are post-operative temporary prosthetics). Occupational therapists receive education and training specifically in the fabrication of orthotics and training in the use of prosthetics through coursework, laboratory training in practical applications, and fieldwork (clinical internships). Entry level for occupational therapists is currently a Master’s degree or higher post-baccalaureate degree such as a Doctor of Occupational Therapy (OTD) degree. All occupational therapist programs are accredited by the Accreditation Council for Occupational Therapy Education. To practice, occupational therapists must graduate from an accredited school and pass a certification examination in all 50 states, the District of Columbia, Puerto Rico and Guam.

Entry level for physical therapists is currently a Master’s degree, and the current educational preparation as a physical therapist is predominately at the Doctor of Physical Therapy (DPT) degree, which is a three year post-baccalaureate degree. All physical therapist programs are accredited by the Commission on Accreditation in Physical Therapy Education. To practice, physical therapists must graduate from an accredited school and pass a licensure examination in all 50 states, the District of Columbia, Puerto Rico and the Virgin Islands.

CMS typically defines the services that a health care practitioner can provide under Medicare in accordance with that practitioner's state practice act. State practice acts for physical therapists and occupational therapists include the ability of therapists to use orthotics and prosthetics as part of the practice for each discipline. Many physical therapy and occupational therapy practice acts use language, such as "devices, braces, and assistive devices for therapeutic purposes," to describe the use of orthotics and prosthetics. AOTA, ASHT, and APTA have continuing education requirements to assure competency, and provide CE courses specific to orthotics and prosthetics.

Through the training they receive through coursework, laboratory training in practical applications, and fieldwork (clinical education), occupational therapists and physical therapists identify health improvement opportunities, provide interventions for existing and emerging problems, prevent or reduce the risk of additional complications, and promote wellness, fitness, and health. They address the patient's and client's needs through a continuum of service across all delivery settings. The use of orthotic and prosthetic devices is an integral part of the practice of physical therapy and occupational therapy. Occupational therapists and physical therapists furnish, apply, and, as appropriate, fabricate devices and equipment when the evaluation findings, diagnosis, and prognosis indicate the use of devices and equipment to meet functional goals and to enhance wellness, fitness, and health. Physical therapists and occupational therapists use devices to address issues such as: edema and swelling; orthotics alignment, mobility and stability; prevention or remediation of functional impairments or limitations; protection of body parts from further injury; and reducing risk factors and complications.

Individuals who have difficulty in accomplishing functional tasks are assisted by the use of lower extremity and upper extremity orthotics or temporary prosthetics. Many of these patients have impairments in the musculoskeletal or neuromuscular systems that may limit their movement efficiency and decrease their activity. Occupational therapists and physical therapists are able to fabricate devices that can modify or enhance a patient's ability to perform activities and decrease the burden of impairments including pain.

To provide additional information, we also have enclosed a copy of AOTA's letter of November 2008 (Tab 3), which contains information related to occupational therapy qualification in the provision of orthotics, a letter from ASHT (Tab 4), which describes the process of low temperature thermoplastic orthotics fabrication and how it fits into the term definitions in the October 2008 DMEPOS Quality Standards and, at Tab 5, APTA has included a document describing the clinical considerations when physical therapists provide patients with lower and upper extremity orthotics. It is hoped that this information will facilitate greater understanding of therapeutic orthotic fabrication and its relationship to the quality standards.

The only way to ensure that Medicare beneficiaries continue to have access to medically necessary and appropriate orthotic and prosthetic services is to reimburse for occupational therapy and physical therapy interventions as currently provided for under the law. It is our sincere hope that in the forthcoming regulation required by Section 427 of BIPA, CMS will continue to define "qualified occupational therapists" and "qualified

physical therapists” using the same definition stated in its regulations at 42 C.F.R. § 484.4. This definition is amply supported by existing law, historical precedent and sound clinical practice and is in the best interest of Medicare beneficiaries. This definition was fully reviewed, vetted, and updated by Medicare program staff working closely with AOTA and APTA staff during the notice and comment process for the 2008 Medicare Physician Fee Schedule Final Rule issuance in November 2008.

Once again, we would like to thank you and your staff for the time and effort put forth in this process. Should you have any questions or comments, please contact Sharmila Sandhu at (301) 652-6611 x 2863 or via email at ssandhu@aota.org.

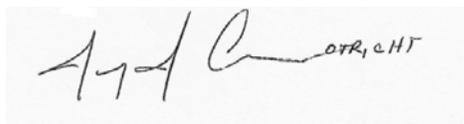
Sincerely,



Sharmila Sandhu, Esq.
Regulatory Counsel
American Occupational Therapy Association



Gayle Lee, Esq.
Director, Regulatory Affairs
American Physical Therapy Association



Jerry Coverdale, OTR/L, CHT
Vice President, American Society of Hand Therapists