A Uniform Definition for Habilitative Services

Laura Hooper

AOTA and its coalition partners scored a big advocacy victory on behalf of the occupational therapy profession when the U.S. Department of Health and Human Services (HHS) provided a uniform definition of habilitative services and devices in its *Benefit and Payment Parameters for 2016* final rule, published on February 27. This marked an important step toward addressing AOTA's longstanding concerns with the way some states and insurers have implemented the Patient Protection and Affordable Care Act's (ACA's) Essential Health Benefits (EHBs). AOTA's Congressional lobbying efforts during the development of the ACA helped get habilitation included in the EHBs alongside rehabilitation, and AOTA staff members have since been monitoring the long regulatory process of defining and refining the EHBs.

The ACA mandated that individual and small group market plans cover 10 EHBs, among them *habilitative* (helping a person learn something for the first time) and *rehabilitative* (helping a person relearn something after an injury, illness, or disabling condition) services and devices. But HHS let states determine the scope of those benefits by selecting an existing plan to serve as a "benchmark." Marketplace plans are required to offer benefits that are substantially equal to those in the benchmark. However, for habilitative services (a category previously unavailable in most health insurance plans), HHS allowed states to define the services covered. If states did not, it was left to insurers to provide habilitation benefits "similar in scope, amount, and duration" to those for rehabilitation—or to simply decide what services they would cover, provided they reported their decisions to HHS.

AOTA research found that such a permissive standard has contributed to inadequate coverage of habilitation by many plans. In December 2013, AOTA began analyzing the first marketplace plans, and in November 2014 produced a report identifying significant variation in coverage of rehabilitation and habilitation among marketplace plans (see the November 24, 2014, Capital Briefing). Some states allowed very low annual limits on the number of covered outpatient occupational therapy, physical therapy, and speech-language pathology visits. In many cases, plans combined the limits for rehabilitation and habilitation.

In December 2014, HHS sought public comment on proposed regulations that would provide a uniform definition of habilitation. The Office of Personnel Management (OPM) also sought comment on a proposed rule defining habilitative services for the more than 200 multi-state marketplace plans under OPM's purview, proposing to adopt the federal definition if HHS decided to define the term. AOTA submitted comments to both agencies expressing strong support for a uniform definition of habilitation. We urged HHS to adopt a definition largely based on the National Association of Insurance Commissioners' definition, which AOTA helped develop in 2010 and which specifically listed occupational therapy, physical therapy, and speech-language pathology. We also urged HHS to include "devices" in their definition. In its uniform definition of habilitation, HHS adopted AOTA's suggested language almost word-for-word.

The uniform definition clarifies that plans can't impose any limits on habilitation that are less favorable than those imposed on rehabilitation. It also prohibits combined limits on habilitation and rehabilitation. Plans cannot simply retain the rehabilitation visit limit from the benchmark and have habilitation count toward that limit. Some insurers said that their claims systems were unable to differentiate between habilitation and rehabilitation, so HHS agreed to delay this requirement until 2017 to allow insurers to update those claims systems.

AOTA believes that a uniform definition will lead to more robust benefits for consumers in states that didn't define habilitation (and thus left it to insurance plans to do so) and lead to benefits that are more consistent and easier to compare. Insurers can no longer decide what habilitation services to cover. The uniform definition sets a floor for habilitative services. States with more robust and consumer-friendly definitions can keep them, whereas states that chose less robust definitions are expected to supplement their habilitation benefits to comply with the federal definition. AOTA will use the uniform definition to advocate for comprehensive definitions of habilitation and rehabilitation in states with definitions that are, in our view, limited.

Additionally, the uniform definition will help clarify the difference between habilitative and rehabilitative services not only for states and insurers, but also for occupational therapy practitioners and their clients. For more, visit www.aota.org/advocacy. ■

Laura Hooper is AOTA's manager of health policy.