

# State Legislative Forecast

Dan Brown and Chuck Willmarth

State occupational therapy associations will be busy this year advocating for occupational therapy as health care reform is implemented. In addition, several state associations will amend their practice acts, plan for licensure initiatives, or monitor the efforts of other professions to expand their scopes of practice.

**Health Care Reform.** States will engage in implementing various provisions of the Affordable Care Act (ACA) throughout 2013. One provision directs states to create health insurance exchanges, through which consumers may purchase insurance coverage and, if they meet certain income thresholds, receive subsidies. If a state fails to create an exchange, the federal government will create and operate one for them. Roughly half of the states have committed to creating their own exchanges or sharing responsibility for the operation of their exchanges with the federal government. Moving forward, there may be opportunities to enhance coverage for occupational therapy as exchanges become active purchasers in the health insurance marketplace and acquire an influence on the scope of benefits covered by health plans.

The implementation of the essential health benefit requirements of the ACA has more immediate implications for the profession. Starting in 2014, most health insurance policies sold to small groups and individuals will have to cover occupational therapy as a rehabilitative and habilitative benefit. However, many states will have the option to decide what specifically health plans must cover under the habilitative benefit. This creates a unique opportunity for the profession to advocate for definitions of habilitative services that benefit recipients of occupational therapy.

**Medicaid Expansion.** The ACA called for an expansion by 2014 of Medicaid eligibility to all citizens with incomes below a certain level. However, the Supreme Court ruled last June that the federal government cannot withhold existing Medicaid funding from states if they choose not to expand Medicaid eligibility. In addition, the federal government recently indicated that states may not partially expand Medicaid eligibility and still receive enhanced federal matching funds. Discussions of whether to expand Medicaid, which in the first 3 years will be almost entirely paid for by the federal government, are sure to be some of the most prominent debates in many state legislatures in 2013.

**State Regulation.** Occupational therapists (OTs) are licensed in 48 states, the District of Columbia, and Puerto Rico. Colorado and Hawaii register occupational therapists. 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. The Occupational Therapy Association of Colorado is moving forward with legislation in 2013 to license OTs and OTAs. The Indiana Occupational Therapy Association is pursuing legislation to revise the occupational therapy scope of practice in the state's licensure law that was enacted in 2010. Last year in Michigan, a task force convened by the governor recommended that occupational therapy and other professions be deregulated. The Michigan Occupational Therapy Association and others raised concerns about the proposal with state regulators. The recommendations would have to be passed by the legislature, which has not taken any action so far.

**Scope of Practice Issues.** Behavior analysts are seeking licensure leg-

islation in a number of states. The licensure efforts by behavior analysts have several implications for the occupational therapy profession: (1) the envisioned scope of practice includes traditional areas of occupational therapy scope of practice, (2) occupational therapists who use applied behavior analysis techniques in their practice may not meet licensure requirements, and (3) behavior analyst licensure laws could be interpreted in the future to restrict occupational therapy 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 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 in 2013.

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

Although the 2013 legislative sessions will be challenging, AOTA and state associations are working hard to realize the Centennial Vision for the profession. 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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