2015 State Legislative Forecast

Chuck Willmarth

State occupational therapy (OT) associations and AOTA will be busy advocating for the profession in 2015—ensuring coverage of OT by health insurance plans, protecting the scope of OT practice, and updating state licensure laws.

State regulation of OT. With the successful passage of a Hawaii licensure law in 2014, occupational therapists will now be licensed in 50 states, the District of Columbia, and Puerto Rico. Occupational therapy assistants will be licensed in 49 states, the District of Columbia, and Puerto Rico once the new law goes into effect. The New York State Occupational Therapy Association will be pursing licensure legislation for occupational therapy assistants. The Utah Occupational Therapy Association is pushing for legislation to extend the sunset date for the state’s OT practice act. Several states are considering introducing legislation to review state OT practice acts to address scope of practice, continuing competence requirements, and other provisions.

Although enactment of OT licensure laws across the country is a monumental achievement that took more than 40 years to accomplish, the profession’s advocacy efforts must continue to ensure that state regulatory systems for OT keep up with the rapid pace of change happening in health care. The state licensure model for health professions was not developed for today’s health care delivery system and the mobility of the OT workforce. Occupational therapists and occupational therapy assistants frequently cross state lines—either physically or virtually—to provide care to their clients. Crossing state lines immediately triggers questions about state licensure requirements, and many therapists hold licenses in multiple states, which are expensive to obtain and maintain. This topic was discussed by state OT regulators at NBCOT’s State Regulatory Conference in October 2014 and previous meetings. AOTA policy staff participated in the session, “Current and Future State of Licensure Portability and Telehealth,” which featured panel presentations and a Q&A with attendees. AOTA, state occupational therapy associations, and other stakeholders will be studying the implications of licensure portability.

Scope-of-practice challenges. State OT associations are monitoring state legislative activity initiated by a range of health care professions seeking initial licensure or attempting to more clearly define their scopes of practice. Many of these initiatives will affect the domain of OT practice.

Behavior analysts are seeking licensure legislation in a number of states in 2015. Implications of these licensure efforts include: (1) the envisioned scope of practice includes traditional areas of occupational therapy 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 OT practice.

Additional professionals—including athletic trainers (ATs), recreational therapists, and music therapists—are pursuing legislation in the states defining or expanding their scope of practice. These proposals often redefine who or what can be treated and include aspects of performance traditionally addressed by OT. As an example, draft AT legislation included language stating that ATs can treat a “condition resulting from occupational activity immediately upon the onset of such injury or condition.” The West Virginia Occupational Therapy Association and AOTA are advocating for the inclusion of language to clarify that “occupational activity” has a completely different meaning within context of the AT practice act language.

Copayment limits. Often driven by physical therapy chapters, legislation that would require health plans to limit copays, coinsurance, and deductibles for non-physicians has been considered in a number of states in recent years, and legislation is expected in multiple states in 2014. New Hampshire enacted legislation in 2014 to limit copays for OT services. State associations need to ensure that OT providers are covered by the provisions of the proposals. Maintaining parity in cost sharing with other non-physicians—in particular, physical therapists—is important to ensure equal treatment of OT.

Autism mandates. Autism reform legislation has been enacted in 38 states and DC. Most of these state laws have included OT as a mandated service for clients with autism. AOTA will continue to work with state associations to advocate for including coverage for OT in autism legislation. In 2015, legislation will likely be introduced in Georgia, Hawaii, Mississippi, North Carolina, Ohio, South Dakota, and Tennessee.

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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