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**American Orthotic &
Prosthetic Association**

AOPA in Advance

Breaking News for O&P Professionals

March 22, 2010

SPECIAL EDITION

O&P News

House Enacts Health Care Reform-Both Houses Have Approved the Senate Bill; "Reconciliation Bill" Going to Senate; Implementation Battles Begin

Yesterday, the U.S. House of Representatives passed two critically important landmark bills to enact the very controversial health care reform legislation. The House first passed the identical health care bill that had previously been enacted by the Senate in December. Amidst all the parliamentary confusion this should be clear-no matter what happens with the budget reconciliation bill when it moves to the Senate, America has the biggest new entitlement program since Medicare was enacted almost fifty years ago! The exact and final rules on who will pay for the new law, and the precise terms of the benefits may or may not change a bit, depending on the fate of that reconciliation bill, but the fundamental decision has been made-the President will sign the Senate bill and it WILL be the law of the land!

Orthotics and Prosthetics Issues

So the first question is how did orthotics and prosthetics fare in the health care reform legislation? Well, the upside gains that we desired the most did not come to fruition; but also, we did not take any lethal blows to how O&P is provided and paid for. The best thing that can be said about this law is that, at least according to the Congressional Budget Office, it will result in 32 million additional persons having some measure of health insurance. We wanted to have our Medicare O&P Improvements Act included, which would have required several key steps to improve care and eliminate fraud and abuse enacted in this bill, but it was not. Similarly, we had great hopes that the Federal O&P Parity Bill could be included in this major health insurance measure, but it was not. We succeeded in turning back an early plan that might have bundled O&P services into a larger single payment to hospitals, rehab hospitals or others, and we do have language that requires inclusion of "rehabilitative and habilitative services" in the federal benefit plan.

There are several parts of the new laws that we do not like. Because of some ambiguities in the language defining health care benefits we have to fight our way through arguments in potential regulations over assuring the O&P benefits are included in all insurance policies. O&P and all other provider groups will now be subject to annual productivity adjustments that can negatively impact

your fee schedule. Although the Senate bill provision that established a medical device excise tax provided for an exemption from the tax for devices regulated by FDA as Class I medical devices, the eventual manager's amendment for the budget reconciliation bill attempts to reverse that policy and impose this additional tax on Class I medical devices (which comprise most component parts and final devices used in orthotic and prosthetic care). We are concerned about the "health insurance compacts," which authorize health insurers to sell insurance across state lines, and in doing so might essentially rescind the state parity bills that have been enacted in 18 states.

There are a few good things that will come from this bill. If we succeed in assuring that "rehabilitative and habilitative services" is interpreted to include prosthetic and orthotic services, this could amount to a virtual mandate of coverage in federal plans. While there are no O&P parity provisions, per se, there is general language in the new law outlawing caps and lifetime limits on health insurance. Depending on how this law plays out in practical application, it may be possible that at least some of the objectives of federal parity are set in motion by this new law. There are several provisions that interact with each other to make this a bit muddled.

Now We Move On to the Next Round...

The enactment of this new law is not the end of this battle. Rather, it is time to move onto the next round. This bill, several thousand pages in length, sets the stage for the Department of Health and Human Services (HHS) and the Centers for Medicare and Medicaid Services (CMS) to implement this law. That means a huge number of new policies, and enactment of dozens of new regulations. So, a major part of the next round will be having AOPA on the scene, attending the meetings, representing the field through filing comments and rational explanations of why certain steps will enhance or detract from O&P patient care. It is likely there will be some follow-up bills, technical corrections, Medicare extensions and the like, and we will be monitoring each of these to assure that your views and concerns as members are articulated and your vital interests are defended.

Even though our two legislative goals—Medicare Improvements and parity—were not incorporated into the health care bill, that doesn't end these efforts, but just means we must be more creative in our efforts to get them enacted. The Medicare O&P Improvements Act would effect some measures to fight fraud, assure provider qualifications, and link reimbursement to those qualifications. It would actually save the government money. AOPA is looking at ways it could be worked into the annual federal budget bill, and there also is the possibility of the guts of this bill being adopted as a regulation by The Centers for Medicare and Medicaid Services to fight fraud and abuse. And, if CMS is not inclined to generate these improvements, patient protections, and budgetary savings, the Office of Management and Budget might mandate the agency to do so.

There are big risks and question marks on the horizon for this new round. Most ominous is that the health care bill did nothing to address the need for a Medicare "doc fix." The reason is that permanently resolving this problem with what is called the "sustainable growth rate formula, or SGR,"—a misbegotten formula enacted in legislation a dozen or so years ago which each year dictates a reduction in Medicare physicians fees—will cost \$200 billion or more. While Congress can delay paying the piper with a short-term fix, in the end this problem will need to be tackled, and you can bet that this Congress will be looking to providers to ante up the bulk of the payment in reductions in federal Medicare payments—and this would be on top of the \$500 billion in Medicare cuts approved in the health care bill. It doesn't take a math degree to recognize that with 32 million additional insureds, and no assurance that there are really more revenues in the system, long-term, to pay for their services, the fee per-service is in the cross-hairs for significant reductions, eventually, if not immediately.

Now we move into the stage where we fight our way through the arguments over assuring the O&P benefits are included in all policies, fights about the annual productivity adjustments that can negatively impact your fee schedule, and the medical device excise tax—fights for fraud and abuse reform in O&P, as well as O&P parity will continue. Come to the AOPA Policy Forum (May 26-27) at

the Hyatt Regency Washington on Capitol Hill, where you can get the latest update and advocate your position to your representatives.

[Click here to access the registration form for the 2010 AOPA Policy Forum.](#)

Questions? Contact Steven Rybicki at srybicki@AOPAnet.org or (571) 431-0835.

Send Us Your News!

The next **AOPA** *in Advance* will arrive in your inbox on March 23. So if you have a new employee or a new office, tell us! Share your news with the over 15,000 readers of the *O&P Almanac* and **AOPA** *In Advance* newsletter. Contact Steven Rybicki at srybicki@AOPAnet.org.

330 John Carlyle St., Suite 200, Alexandria, VA 22314
Tel: (571) 431-0876, Fax: (571) 431-0899
www.AOPAnet.org

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