



A TOPIC AOPA IS WORKING ON THAT IS IMPORTANT TO THE FUTURE OF YOUR BUSINESS

Making Sure that Orthotics and Prosthetics Are Included in the Essential Health Benefits Package Under Health Care Reform

The Core of the Issue:

Because of the tortured manner in which the Health Care Reform Law was enacted a little over a year ago, it is less than 100% certain that benefits for orthotics and prosthetics will be included in the regulations that the Secretary of Health and Human Services (HHS) will be promulgating later this year defining what services are included among the essential health benefits package. The bill that was passed by the House, in November 2009, was very clear—the health benefits package would explicitly include orthotics and prosthetics. However, the Senate wrote its own bill language—different from the House—which was enacted in December 2009. The Senate law made no explicit mention of orthotics or prosthetics, instead stating that rehabilitative and habilitative services would be included in the essential health benefits package. Senate health staffers who helped write the law said, “oh yes, of course, rehabilitative and habilitative services includes orthotics and prosthetics.” Well, as you will recall, then Senator Scott Brown was elected in January 2010, and the Democrats lost their veto-proof margin in the Senate. Since no further votes could be taken in the Senate, the bill the House had enacted went away and the House Democratic majority adopted the Senate bill [making some modest revisions subsequently in a separate budget reconciliation bill, which the Senate could enact without filibuster (hence no 60-vote margin needed)].

Why Is It Important to You?

If the Secretary of HHS were to enact regulations that do not explicitly define the legislation’s words “rehabilitative and habilitative services” to include orthotics and prosthetics, and therefore orthotics and prosthetics are not included in the essential health benefits package, private insurers offering coverage in health insurance exchanges and elsewhere under the federal law would be free to completely exclude O&P benefits from that coverage. Payments for our services might be completely dependent on the non-insurance resources of our patients. If we are successful in having orthotics and prosthetics included in the essential health benefits package, it could go a long way to providing the assurance we are currently lacking on the Medicaid front. Here’s why. When the Medicaid law was enacted decades ago, **O&P services were not defined as a mandatory Medicaid benefit**. Each state gets to decide individually. Since what’s included in the essential health benefits package could become the federal benchmark for all coverages, O&P’s inclusion could be seen as making O&P mandatory for any federally-supported state Medicaid benefits as well.

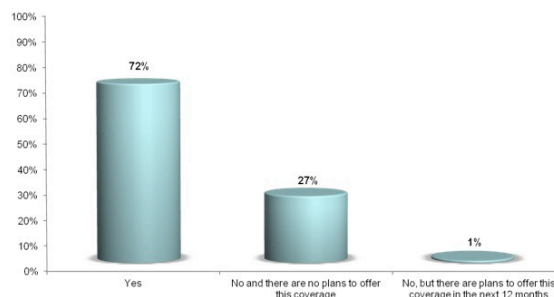
“If ... regulations ... do not explicitly define the legislation’s words “rehabilitative and habilitative services” to include orthotics and prosthetics, ... private insurers offering coverage ... under the federal law would be free to completely exclude O&P benefits from that coverage.”

What Is AOPA Doing About This?

The law directed, and HHS has indicated that the criteria it will use for what’s included in the essential health benefits package will be twofold: (1) how **prevalent** is the coverage in the plans of private employer plans; and (2) how **expensive** is it to provide the coverage. In late 2010, HHS commissioned the Institute of Medicine (IOM) to conduct extensive fact-finding and help advise HHS in writing the regulations. AOPA provided a comprehensive package of materials to the IOM supporting O&P inclusion.

AOPA’s central message has been that it was always intended that O&P be included as was clearly stated in the House version of the Affordable Care Act. However, the Senate version was signed into law and left defining essential benefits

Does your company’s health care plan for employees currently include coverage of any kind of artificial limbs and custom orthopedic bracing?



Note: n = 1599. Organizations that did not offer a health care plan to employees were excluded from this analysis.

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to the Secretary of HHS. Rep. George Miller (D-7th CA) and Rep. Bill Pascrell, Jr., (D-8th NJ) have issued statements in the Congressional Record confirming this intent. AOPA has emphasized that if O&P services were not included it could seriously affect O&P patient care. Third party payers would be all over the lot in providing coverage. To strengthen AOPA's argument for inclusion, AOPA has also developed, funded, and provided to HHS the following data:

- Two-thirds of respondents of large employers surveyed in seven large cities said that major employer health insurance plans cover O&P services over 80% of the time, with the composite national average being at least 75% for coverage of O&P services and devices by these employer plans.
- A study by the Society of Human Resource Management, commissioned by AOPA, with responses from 1,116 employers revealed that 70 percent of smaller employers (100-499 employees) and 75 percent of large employers (more than 5,000 employees) currently offer orthotics and prosthetics coverage.
- As noted in studies commissioned in the context of state parity laws, the costs of providing O&P coverage are small. Some independent studies, e.g. one conducted for the state of Colorado, say that states with similar laws save more money than coverage costs by providing timely O&P services which can help avoid more costly co-morbid health conditions.

The Bottom Line:

Clearly, success by those arguing to "repeal and replace," or of a final Supreme Court decision invalidating the law would alleviate, if not ameliorate this problem. But with Democrats in the majority in the Senate and with the President holding the veto pen, we cannot rest our future solely on the prospect of repeal and replace, or a judicial nullification. This is a critically important battle for O&P. AOPA is sparing neither efforts nor expense in the effort to insure inclusion of O&P in the essential health benefits package. The Amputee Coalition has also joined the fight, along with other organizations in the O&P field. AOPA Policy Forum attendees have asked their House and Senate members to write a letter to HHS urging them to include O&P, and you may want to do the same. A sample letter can be found at www.AOPAnet.org/hhs/. When the time comes and HHS issues a proposed rule, we'll alert every company in the O&P world, and urge you to take the time to submit comments on the proposal rule—it will be critically important for you to do so.

In closing, the essential health benefits fight is one of the many ways AOPA has allocated the resources represented by your dues to try to protect the vital interests of O&P for our members and their patients. We're proud to fight these battles every day, and we work very hard to win the cause for you—it's the right thing to do!

Very truly yours,



Thomas F. Fise, JD
AOPA Executive Director

If O&P is not deemed an essential health benefit, our providers might not be paid by some insurers. That's why your resources are being directed to a significant public relations effort.