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AOPA In Advance SmartBrief
Breaking News
August 12th, 2014

AOPA Headlines:

OTS Orthotic Regulations – Sign up for AOPA's FREE Webinar & Find Out What the Proposed Rule Could Mean For You

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District Court Ruling in AOPA v. Sebelius, HHS On Audits, Prosthetist's Notes, & Dear Physician Letter

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Compliance, Coding, and Documentation Is Coming To St. Louis

Last Call For Technical Fabrication Contest Registration!

AOPA Gives Thanks To The 2014 Supplier Plus Partners

AFO/KAFO Policy: Understanding the Rules -- August Webinar

Upcoming AOPA Events

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OTS Orthotic Regulations

A New CMS Proposed Rule Could Limit Your Patients' Access to Care AND Eliminate Orthotic Fitters

CMS released a proposed rule on July 11 that addresses Off-the-shelf Orthoses and the definition of Minimal Self-Adjustment. In an effort to define the scope of individuals authorized to fit orthotic devices deemed by CMS to be off-the-shelf (OTS), the proposed rule will add physicians, treating practitioners, PTs and OTs as "individuals with specialized training" to the current definition that includes certified orthotists as qualified individuals to provide custom fitting of orthoses.

The proposed rule states that *orthotic assistants and fitters are not considered to have specialized training for the purposes of providing custom fitting of orthoses* and therefore any devices they fit or adjust will be considered OTS.

CMS has previously defined "minimal self-adjustment" in expansionist terms for defining OTS orthotics, which could have later implications for competitive bidding of products not appropriate for delivery without service. The new rule compounds instead of corrects the issue, and could limit your patients' access to care.

Here's what AOPA is doing and how you can participate:

✔ A FREE educational webinar on August 14 at 3:00 PM EST, where O&P insiders will examine Medicare's proposal, and explain how it would affect your business. **RSVP today by clicking here and reserving your spot.**

✔ **Pre-written letter for you to quickly submit comments to CMS via AOPAvotes** listing ways that CMS is misguided in their proposal and how to correct these deficiencies to avoid patient harm. All letters through AOPAvotes.org will be hand-delivered to CMS prior to the comment submission deadline.

✔ Similar to the Prior Authorization campaign, we will be mailing postcards for you to distribute to your orthotic patients.

✔ AOPA will be submitting its own comments on behalf of you, its members. This is not a substitute for you, assuring that Medicare hears your views, so send CMS your comments in addition to those from AOPA.

✔ AOPA is working with the O&P Alliance and all organizations in the profession to educate and encourage folks to participate

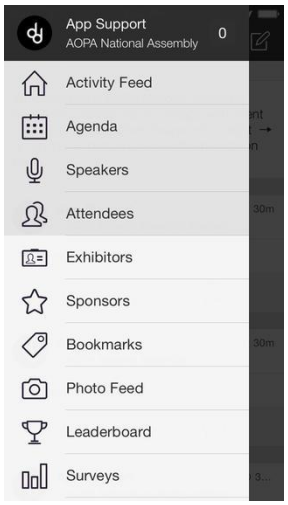
Plan to participate in the upcoming free AOPA webinar on August 14 at 3:00 PM EST to get the straight story and the implications for your practice. Get more info on how to participate, to be heard and to send in your comments.

RSVP To Attend

Contact Devon Bernard at (571)431-0854 or dbernard@aopanet.org with questions.

Download the Exclusive AOPA 2014 National Assembly App

Download the National Assembly Mobile App to your iPhone, Android or iPad to create a personal agenda, download handouts, review speaker bios, rate speakers, utilize the interactive exhibit hall map, send messages to individual attendees, post messages to all attendees through the news feed or filter the agenda by tracks (orthotic, pedorthic, technical, business, prosthetic, workshops or ppts).



It's easy to add the app to your Smartphone:

- For iPhone/iPad users, simply go to the app store and search 2014 National Assembly and install.
- For Android users, simply go to the Play Store and search 2014 AOPA National Assembly and install

You will be asked to enter your email address and select two interests. One interest should be the O&P School you graduated from even if it is the school of hard knocks. We've create various ways for you to connect with your alumni, including through the app and during the welcome reception.

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Experience the Energy & Register TODAY!

Preliminary Program: http://bit.ly/Assembly14Prelim

Register online: https://www.expotracshows.com/aopa/2014/

General Information: http://www.aopanet.org/education/2014-assembly/

Hotel Reservations: http://www.aopanet.org/education/2014-assembly/attend/#hotel

Questions: Visit www.AOPAnet.org or Contact AOPA at 571/431-0876 or info@AOPAnet.org

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District Court Ruling in AOPA v. Sebelius, HHS
On Audits, Prosthetist's Notes, & Dear Physician Letter

On August 4th, 2014, the U.S. District Court for the District of Columbia Chief Judge Royce Lamberth issued a decision GRANTING the Government's Motion to Dismiss in the case AOPA filed challenging the Medicare program's actions relating to prosthetic claims, the August, 2011 Dear Physician Letter and the exclusion of the prosthetist's notes from having independent value, separate from the physician's notes as documentation in support of claims.

This is a disappointing result, and obviously, not the one that we had hoped for when we filed the lawsuit in May, 2013. As we stated before embarking on this course of action, filing suit against the federal government is always a risky proposition, and Congress has provided many special rules limiting judicial review with respect to challenging decisions made by Medicare, so that odds for success in suing the Medicare program are very slim historically. The Court granted the government's Motion to Dismiss based on the Court's finding that "AOPA has failed to establish that this Court has jurisdiction over its claims."

Key Findings of the District Court

The District Court issued a 14-page opinion dismissing the AOPA claim, which is available for review on the AOPA website here. Here are the key findings from AOPA's view.

1. The case was dismissed because AOPA "has failed to establish that this Court has jurisdiction over its claims."

2. The Court agreed with Medicare that even if the Dear Physician letter had been overturned by the Court, that the Medicare Program Integrity Manual and the Local Coverage Determinations included sufficient basis to support Medicare's prosthetic claims denials and audits. Notably, the Court pointed to the fact that after the Dear Physician letter, in January 2013, Medicare revised its LCDs, stating that "the revised LCDs state that "records from suppliers or healthcare professionals with a financial interest in the claim outcome are not considered sufficient by themselves for the purpose of determining that an item is reasonable and necessary." The Court noted that these revised LCDs could be considered because they were completed before our suit was filed, without addressing the fact that they were being applied to claims filed and paid before those revisions existed.

Criticisms Some Have Voiced About the District Court Decision

- The judge totally ignored AOPA's claim that CMS had violated BIPA by failing to promulgate regulations for over 10 years.
- The judge glossed over AOPA's allegation that the "Dear Physician" letter changed the relevant standard by spelling out the additional documentation that physicians had to provide (free of charge) in order for suppliers to get paid.
- On the jurisdictional point, he misconstrued the argument. AOPA contended that AOPA members were winning appeals before ALJs, which CMS **declined** to appeal to the Medicare Appeals Council, but the agency also continued to deny claims on the same grounds. Far from showing that a change in agency policy was possible, the handling of appeals demonstrated that CMS was preventing the documentation standard from ever getting to a final resolution in the administrative process.

3. The Court stated "The agency admits that it has 'focused more resources on claims for prosthetic devices'…to more effectively tamp down waste, fraud and abuse.'"

4. AOPA relied on cases that held that written communications with the agency could establish Medicare's position, and could waive the usual obligation to exhaust all administrative remedies before a court could hear a claim. The District Court opinion distinguished AOPA's cases from these cases, saying that the prior cases were "closer to the 'concrete claim for reimbursement' that the Supreme Court has held is required."

5. In the end, the District Court cited the most common basis for denying a claim against the federal government, the failure to exhaust all administrative remedies. The court refused to invoke the exceptions that arose from other cases stating "in cases arising under the Medicare Act, the requirement for 'exceptional cases' and certainty are even more stringent because 'the bar of section 405(h) reaches beyond ordinary administrative law principles (such as) exhaustion of administrative remedies' and 'demands the channeling of virtually all legal attacks through the agency." They cited Congress's "intent to assure 'the agency greater opportunity to apply, interpret, or revise policies, regulations, or statutes without the possibly premature interference by different individual courts applying ripeness and exhaustion exceptions case by case.'"

6. Finally, the case noted that there was some evidence that O&P providers had succeeded on appeals to ALJ, but said that "AOPA…fails to cite even a single supplier out of its 816 members who has exhausted *all* of the administrative remedies available through the agency," explaining in a footnote that even a provider whose affidavit showed appeals to ALJ "but has yet to present her issues to the Medicare Appeals Council, which is the final decision maker for claims under the Medicare Act 42 U.S.C. section 405.904(a)(2)."

Conclusion

While AOPA will continue to consider not only this case but every possible action that can be taken to represent and protect the vital interests of O&P providers and patients relating to the actions on Medicare as to claims, denials and policies, not just for prosthetics but across the entire spectrum of O&P patient care, we conclude this report with a huge "thank you" to AOPA members, as well as to every individual who contributed with financial support as well as their in kind efforts to support the District Court litigation and our efforts via the AOPA Policy Forum, meetings, publications, and our legislative and regulatory advocacy. The O&P field and the patients we serve deserve our absolute best efforts on behalf of these vital stakeholders and we hope AOPA's commitment to pursue this litigation as one component of fulfilling that obligation.

Click here to review the 14 page District Court issued opinion dismissing AOPA's claims.

AOPA Statement on Ruling of the District Court, District of Columbia in AOPA v. Sebelius, HHS, Granting Government Motion to Dismiss

AOPA's Executive Director, Thomas F. Fise, JD, issued the following statement on the District Court Ruling granting the agency's motion to dismiss AOPA's claims:

"AOPA is disappointed with the decision of the District Court, and is still weighing its options in terms of possible appeal. AOPA filed the lawsuit hoping to address the threat to the availability of prosthetic devices resulting from the abrupt August, 2011 change in the federal government's reimbursement rules. While the Court dismissed AOPA's suit on largely technical grounds, AOPA believes that the suit was necessary to stand firm for the principle that Medicare cannot take short cuts with the proper administrative procedures when it is changing rules about what patients are entitled to and how it will determine payments. AOPA felt compelled to do anything that it could that might have helped avoid the over 100 business closings that have ensued, and secure fairness for our members, even knowing the road to success would likely be difficult. AOPA will continue to use all available tools, including advocacy in the legislative, regulatory and judicial sectors to restore fairness for our member health care professionals and the Medicare amputees they serve."

You may click through to AOPA website if you would like to access some commentary by critics of the decision posted there.

People in the News: PEL Hires Business Development Director Doug Petek

PEL LLC welcomes Doug Petek as Director of Business Development. In this newly defined role, Petek will manage all sales and customer service functions. He will also lead the business development strategies and initiatives for both short-term and long-term revenue growth for PEL.

"We are excited to welcome Doug to the PEL team," said Michael Sotak, PEL president. "His extensive experience in orthotics and prosthetics and deep knowledge in helping businesses grow lines up with our company initiatives. I am confident Doug will have a positive impact at PEL."

Petek joins PEL with more than 18 years of sales and management experiences in the medical industry. Before joining PEL, Petek served as regional sales manager at Freedom Innovations, Inc., a manufacturer of advanced technology prosthetic devices for lower limb amputees in Irvine, California. Previously, Petek worked in sales at Partssource, CYTYC Corporation, Stryker Orthopedics and Sulzer Spine-Tech Surgical.

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HIPAA Compliance: Business Associate Agreements (BAA)
Must be Updated by September 23rd, 2014

As a reminder in January 2013 the HIPAA Omnibus Rule was released and the rule contained new requirements for all of your Business Associate Agreements (BAA), and had a compliance date of September 23, 2013. However, the Omnibus rule did allow for a one year grandfathering period for amending or updating any BAAs which were in effect prior to January 25, 2013.

This one year grandfathering/grace period is coming to a close. If a BAA was in effect prior to the release of the Omnibus rule, you have until September 23, 2014 to make any required revisions in order to remain compliant with HIPAA.

In order to stay complaint with the Omnibus requirements and the September 23, 2014 deadline, below are some key items that you will want to include in your BAAs. Keep in mind that these are just the minimum amount of revised requirements you may want to address within your amended or new BAAs; you will want to create amendments or new agreements that are specific to your needs:

- Include a section that allows you to verify that the BA is in compliance with the HIPAA security and privacy regulations.
- Ensure that the BA will report all breaches to you in a timely manner, and that these notifications are done in a standard format. You may want them to provide you with the contact information for those affected; a detailed account of the breach, including what was breached; and any steps they are taking to ensure the breach doesn't occur again. Think of any information that you may require when you have to report the breach.
- If a BA uses any subcontractors be sure to ensure that the subcontractor agrees to the same restrictions and conditions you apply to the BA.
- BA must comply, where appropriate, with the Security with regard to electronic PHI
- To the extent the BA is to carry out the covered entity's obligation under the Privacy Rule, the BA must comply with the same requirements of the Privacy Rule that apply to the covered entity in the performance of said obligations

Any questions, please contact Joe McTernan at jmcternan@AOPAnet.org or Devon Bernard at dbernard@AOPAnet.org.

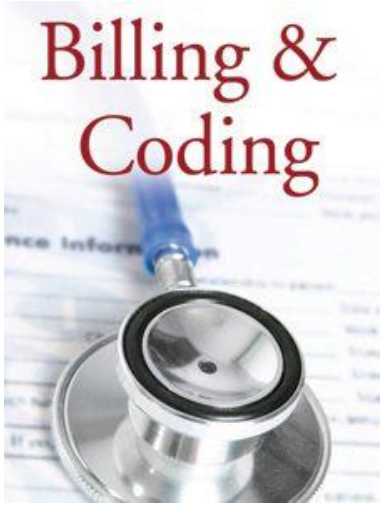
You may also visit the AOPA website at:
http://www.aopanet.org/legislative-regulatory/hipaa/

Compliance, Coding, and Documentation Is Coming To St. Louis

AOPA ESSENTIAL CODING & BILLING SEMINAR – ST. LOUIS

Compliance, Coding, Billing, Audits, Documentation -- We've got you covered!
What better place than the "Show Me" state to host the final Coding & Billing Seminar of 2014?

This interactive seminar is meant for both practitioners and office staff. The advanced two-day seminar features specialized break-out sessions for each group to ensure review of concentration specific materials.



You'll leave with:

- 14 Continuing Education Credits from ABC or BOC
- Course credit for the Business Certificate Program
- Peace of mind knowing that you are billing Medicare correctly
- Priceless education

Come see why participants leave saying ***"Thank you!! I had a great time and learned so much. I look forward to next year!!!***

Renaissance St. Louis Grand Hotel

October 20-21, 2014

AOPA experts, with over 70 years of combined experience, provide you the most up-to-date guidance to help O&P Practitioners & office billing staff learn how to code complex devices, including repairs.

Are you ready to stump them with your hard-hitting questions?

Make your hotel reservations online or via phone at 800-468-3581 or 314-621-9600 and mention the AOPA Coding & Billing Seminar for an approximate rate of $129/night. Make your hotel registrations before the September 29th cut-off date!

Renaissance St. Louis Grand Hotel
800 Washington Avenue
St. Louis, MO 63101
Room Rate $129 plus tax
Reservations 800/468-3581
Cut-off Date: September 29, 2014

Last Call For Technical Fabrication Contest Registration!

Gain recognition for technical fabrication skills by entering the third annual technical fabrication contest to be held at the 2014 National Assembly.

Compete with your counterparts from around the United States to fabricate a lower extremity orthosis or prosthesis that best reflects your interpretation of "energy" as it applies to prosthetics or orthotics. The projects submitted will be judged on ingenuity, design, finish and function.

Contest registration is required along with a $25 entry fee. One winner and one runner-up will be selected in each of the three categories: Practitioner, Technician, and Student. All three categories will also be entered into the People's Choice Award--where Assembly attendees will vote and select their favorite prostheses.

- First Place Winners receive a $500 Cash Prize
- Runners up receive a $200 Cash Prize
- The People's Choice Award recipient will receive $300
- A Trophy and Press Release announcement will be awarded to the school representing the winning students.

It's not too late to enter! Register today!

To learn more visit http://www.aopanet.org/education/2014-assembly/contests/ or contact Steve Custer at scuster@AOPAnet.org or (571) 431-0810.

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AFO/KAFO Policy: Understanding the Rules
August Webinar

AOPAversity

Obtaining Medicare reimbursement for AFOs and KAFOs can sometimes be a challenging and often frustrating experience. Join AOPA for an AOPAversity Mastering Medicare Audio Conference that will focus on the nuances of AFO/KAFO LCD and Policy Article and help you to better understand the rules. Attendees will learn:

- What documentation must exist in order to use the KX modifier on your claim
- What are the coverage rules for AFOs with ambulatory vs. non-ambulatory patient
- How to bill for repairs to AFO's and KAFO's
- When is it okay to use a custom fabricated AFO/KAFO
- Basic review of the major component of a Medicare medical policy

The cost of participating is just $99 for AOPA members ($199 for nonmembers) and any number of employees may listen on a given line. Listeners can earn 1.5 continuing education credits by returning the provided quiz within 30 days and scoring at least 80%.

Register online here!

Contact Devon Bernard at dbernard@AOPAnet.org or 571/431-0854 with content questions.

Contact Betty Leppin at bleppin@AOPAnet.org or 571/431-0876 with registration questions.

Click here to go to the top of the newsletter.

Upcoming Events

Aug 13 — *AFO/KAFO Policy: Understanding The Rules* Webinar Conference
Learn more or register online here

Sept 4-7 — *AOPA 2014 National Assembly* Las Vegas, NV
Learn more or register online here

Oct 20-21 — *Mastering Medicare: Coding & Billing Techniques Seminar* St. Louis, MO
Learn more or register online here

August 2014

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

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EARN CREDITS **2.0 CE** PER MODULE

Because of the highly educational content of the O&P Almanac's Reimbursement Page and Compliance Corner, O&P Almanac readers can now earn two business continuing education (CE) credits each time they read these articles and pass the accompanying quiz.

IT'S EASY AND IT'S FREE!

Read and learn from O&P Almanac's monthly reimbursement column and quarterly compliance corner—you will now not only gain knowledge, but also can earn CE credits by taking a short quiz and receiving a passing grade of 80 percent or higher. AOPA will automatically transmit the information to the certifying boards on a quarterly basis.

The print version of the O&P Almanac is delivered to all AOPA members, ABC certified practitioners, BOC certified practitioners as well as subscribers. Additionally the electronic version of O&P Almanac is available online at *www.aopanet.org/publications/digital-edition/*.

Learn more at:
www.aopanet.org/publications/op-almanac-magazine/

AOPAVERSITY WEBCASTS

EARN CREDITS **1.5 CE** PER MODULE

AOPA offers two webcast series:

Series 1> Mastering Medicare: Coding & Billing Basics and Principles contains nine modules is a recommended prerequisite to the Advanced Coding and Billing Techniques Seminar.

Series 2> Practice Management: O&P Administration Services contains five modules, including topics such as Establishing an O&P Practice, Acquiring an existing O&P Practice, and Enrolling in Medicare and Medicaid.

Learn more at:
www.aopanet.org/education/webcasts/

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During these one-hour sessions, AOPA experts provide the most up-to-date information on a specific topic. Perfect for the entire staff—one fee per conference, for all staff at your company location ($99 Member/$199 Non-Member). A great team-building, money-saving, educational experience! Sign up for the entire series and get two conferences FREE. Entire Series ($990 Members/$1,990 Non-Members). The fee is per location and there is no limit on the number of staff you can assemble in one location.

Learn more at:
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Peruse the complete library at:
www.aopanetonline.org/education

AOPAversity

AOPAversity is your one-stop resource for quality O&P education, developed explicitly for orthotic, prosthetic and pedorthic professionals. Most education has been approved for continuing education (CE) Credits. Learn on your terms with one of our opportunities listed above!

Earn CE credits accepted by certifying boards: BOC INTERNATIONAL

Visit *www.AOPAnetonline.org/education* today!