



American Orthotic & Prosthetic Association

www.AOPAnet.org

AOPA In Advance SmartBrief

Breaking News

November 6, 2014

AOPA Headlines:

[HHS Seeks Input in Addressing Growing ALJ Hearing Requests and Clearing Backlog](#)

[What Do the Results of the Election Mean for O&P?](#)

[Jurisdiction D Publishes Results of the Quarterly Pre-Payment Review for L5980](#)

[Off-the-Shelf Final Rule: CMS Reverses Fields](#)

[Curbell Plastics Acquires O & P Enterprises, Inc.](#)

[Call for Papers: Become a Presenter at the 2015 AOPA National Assembly](#)

[Attend the November 12 Webinar: Gifts: Showing Appreciation Without Violating the Law](#)

[Upcoming AOPA Events](#)

HHS Seeks Input in Addressing Growing ALJ Hearing Requests and Clearing Backlog



Following the October 29 Medicare Appellant Forum hosted by the Office of Medicare Hearings and Appeals (OMHA), the Department of Health and Human Services (HHS) is soliciting suggestions for addressing the growth in the number of requests for Administrative Law Judge (ALJ) hearings, and to help to clear the backlog of pending cases.

As you may be aware, the OMHA office is receiving approximately 14,000 appeals per week, compared to the 1,250 per week in 2011 prior to the “Dear Physician” letter and subsequent increase in auditing activities. While OMHA has received a modest budget increase to expand operations, and are implementing several pilot programs, the O&P Community has yet to feel any relief. The current wait time for an ALJ Hearing is 414 days from the time of the request until the decision.

The comment period is open until December 5, 2014. You can read more background and submit your comments [here](#).

Submit here

What Do the Results of the Election Mean for O&P?

Read this analysis from AOPA Executive Director Thomas Fise, JD.



**American Orthotic &
Prosthetic Association**

November 5, 2014

Dear AOPA Member:

I've been asked to provide an assessment as to what the November 4 mid-term election, and the Republican rout that impressively "flipped" the U.S. Senate from 55 to 45 (Democrat majority in 113th Congress), to what looks most likely as 54 to 46 (Republican majority in 114th Congress) means to O&P. Let me preface this by saying that I think everyone is thankful the election is over so none of us has to watch another attack ad, or receive still another fundraising email. Very knowledgeable pundits have repeated many obvious things ad nauseam, so I promise to make this concise.

If we measure the impact of the election on O&P in terms of how our O&P PAC contributions were deployed, then the news is very good. Your PAC supported 28 candidates—19 Republicans, and 9 Democrats, and if projections are right, we were right on 25 of those "bets," or 90%! We made a strong commitment to new Majority Leader Mitch McConnell (R-KY), and we are hopeful his election will be a big plus for O&P. And we also provided strong support to two prospective new members of the U.S. Senate: (a) Bill Cassidy (R-LA), a physician, a member of the House, a former Policy Forum Speaker and very likely to emerge from next month's run-off as the new Senator from Louisiana; and Senator-Elect James Lankford (R-OK) who, in his former capacity as Chair of the House Oversight & Government Reform Health Subcommittee earlier this year was very helpful in focusing attention on the perils of RAC audits and ALJ delays impacting O&P professionals.

Probably the biggest loss for O&P resulting from this election relates to diminished presence for two Senators, both Democrats, whom we have counted as friends. Senator Tom Harkin (D-IA), long a leading voice for the disability community and co-signer on a recent important letter to Administrator Tavenner on OTS orthotics, has retired, which also means we lost the lead sponsor of the Insurance Fairness to Amputees bill. Senator Ron Wyden (D-OR) is no longer the Chair of the Senate Finance Committee, so we lost a committed O&P advocate in a high place. His very likely successor, Senator Orrin Hatch (R-UT) has been sensitive to O&P issues, and his staff is both knowledgeable and responsive. Senator Dick Durbin (D-IL), who championed our DoD outcomes research funding, won re-election and will be back, and we hope to continue to work with him, albeit in his likely new role in the Minority Leadership.

Our House champion, Tammy Duckworth (D-IL) won re-election, had our solid PAC support, and we are confident she will continue to draw focus on O&P issues. Both of the co-sponsors of our Medicare bill—Glenn Thompson (R-PA) and Mike Thompson (D-CA) won re-election, so we will continue to rely on their support as well as the 17 other House members supported by our PAC who will be returning for the new 114th Congress in January.

Let me close with prognostication on two frequent questions. *First, will the results of the election break the current Washington gridlock?* Both parties always promise to work together, but now we have the legislative branch concentrated in the Republican party and the executive branch still in the Democratic party. They may work together in essential areas, but since gridlock reflects an ideological divide within the country itself, I think odds are that President Obama will veto a substantial number of bills passed by both Houses, and that Senate Democrats will be a barrier to overriding most of those vetoes—so much gridlock is likely to continue. *Will Obamacare be repealed?* Depending on the precise Senate rules, Democrats may be able to block by filibuster, votes on any bills to repeal Obamacare, and of course the President would veto any bill which was enacted by both Houses, and Senate Democrats can unite to sustain such vetoes. So repeal seems pretty unlikely, however, there could be efforts to amend the ACA, and prospects for such bipartisan efforts succeeding are probably greater.

So, the 114th Congress will convene in January. Once Congress sets its calendar, AOPA will be able to set dates for the 2015 AOPA Policy Forum—watch for it, and come and meet your new representatives.

Sincerely,

Thomas F. Fise
Executive Director

Jurisdiction D Publishes Results of the Quarterly Pre-Payment Review for L5980

Noridian Healthcare Solutions, the Jurisdiction D DME MAC has released the results of its 2014 quarterly pre-payment review for HCPCS code L5980 (All lower extremity prostheses, flex foot system). For the period of May through August 2014, a total of 48 claims were reviewed, 40 of which were denied for an overall error rate of 83%. The main reasons for denial cited in the announcement were as follows:

- Documentation does not support the functional level billed on the claim
- Medical record documentation does not support medical need for replacement
- Medical record documentation did not support the beneficiary will reach or maintain a defined functional state within a reasonable period of time
- Medical record documentation does not support the beneficiary is motivated to ambulate
- The documentation submitted was not properly authenticated

Based on the high error rate of 83%, Noridian announced that the pre-payment review for L5980 will continue.

Questions regarding this issue may be directed to Joe McTernan at JMcternan@AOPAnet.org or Devon Bernard at DBernard@aopanet.org.

Off-the-Shelf Final Rule: CMS Reverses Fields

CMS Reverses Fields, Scuttles Current Process for Redefining Orthotics, and for Limiting Scope of Practice for Certified Orthotic Fitters

Late on Friday afternoon, October 31, CMS released the massive final rule covering end stage renal disease payments and a host of other topics, including its proposal to further amend the regulatory definition of “minimal self-adjustment,” and to redefine the Medicare treatment of off-the-shelf and custom fitted orthotic devices. After receiving voluminous comments which the agency did not address, CMS simply recited a general synopsis of its July 2 proposal, and then announced what appears to be a deferment, at least for the present, on any final action on the orthotics section of the proposed rule. Of specific importance is the following statement found on page 445 of the final rule:



At this time, we have decided not to finalize any changes to the definition of minimal self-adjustment in §414.402 to recognize as an individual with specialized training. We may address this provision in future rulemaking.

You can read the [final rule](#) here.

AOPA is pleased that, at least in the near-term, our efforts in contesting the CMS proposal on OTS orthotics, and further expansion of the terminology of ‘minimal self-adjustment’ have borne fruit. Not only would the expanded definition violate the statutory definition but it would likely have expanded the number of OTS devices eligible for competitive bidding. As noted above, CMS released its final rule relating to the larger rule in which the OTS provisions were embedded, but they announced their decision to defer further action as to minimal self-

adjustment, and declined to include any decisions dealing with off-the-shelf, or custom-fitted orthotics. One of the controversial parts of the proposal was a provision that would have limited certified orthotic fitters to patient care services relating ONLY to off-the-shelf orthotics, and that proposed policy now is not poised to move forward in any identifiable time frame. Similarly, the provisions that would have limited provision of custom-fitted devices by unlicensed, and unaccredited providers, and that would have identified physicians, NPs, therapists and certified orthotists as “persons with expertise” in the area of orthotics have also been dropped from any near-term implementation.

Of course, it is left for all of us to speculate on what prompted CMS to reverse fields and not move forward in the direction they had clearly intended just 4 months ago.

Was it the sheer volume of the 500+ comments from AOPA members AND their patients?

- Did the recent [Grassley-Harkin letter](#) to CMS Administrator Tavenner force top levels in CMS to apply the brakes?
- Did the O&P Alliance meeting with CMS Chronic Care Director Laurence Wilson on October 21 help shift the tide?
- Did data from Medicare’s own records analyzed by AOPA’s consultant, Dobson DaVanzo, showing that 19% of Medicare beneficiaries who receive a Medicare-provided OTS orthotic device, also subsequently receive a Medicare custom-fitted device, give pause to the underlying economic principles of CMS action?

We can only speculate, but we have gained, at least, a reprieve. That is very good news, and certainly justifies the energies and resources AOPA, its members and patients invested, as well as what the O&P Alliance and others in the profession have expended in opposing deficient parts of this CMS rule making.

AOPA plans to continue to maintain a high alert on these orthotic issues, hopefully leading to a sounder, more lasting treatment of orthotic devices by the Medicare program.

Any questions regarding this notice can be directed to Joe McTernan at (571) 431-0811 or JMcTernan@AOPAnet.org.

Curbell Plastics Acquires O & P Enterprises, Inc.

Curbell Plastics, Inc., a leading plastics provider, has acquired O & P Enterprises, Inc. in Gurnee, Illinois. O & P Enterprises, Inc. becomes one of Curbell’s 17 sales and distribution facilities strategically located throughout the United States. The acquisition further strengthens Curbell’s national presence and allows Curbell to provide exclusive products, local inventory, and expertise to customers in the Orthotics and Prosthetics market.



In addition to growing the company’s geographic footprint, the acquisition strengthens Curbell’s capabilities in orthotics and prosthetics, offering another trusted channel to market for the plastic sheet manufacturing base. Curbell has plans for capital investment, additional resources, and infrastructure improvements designed to deliver exceptional customer service. For over 40 years, O & P Enterprises has served the Orthotic and Prosthetic industry with quality plastics, foams, fabrication materials, supplies and equipment. To best support the customer, Curbell has retained current management and employees.

Call for Papers: Become a Presenter at the 2015 AOPA National Assembly



Share Your Expertise * Advance Your Career * Improve Patient Care Henry B. Gonzalez Convention Center in San Antonio, Texas

AOPA is seeking high-quality education presentations for the 98th Annual AOPA National Assembly. Share your expertise and advance your career by being part of the country's oldest and largest meeting for the orthotic, prosthetic and pedorthic profession.

Your submissions, based on sound research and strong empirical data, will set the stage for a broad curriculum of highly valued clinical and scientific offerings at the 2015 AOPA National Assembly. All free paper abstracts for the 2015 AOPA National Assembly must be submitted electronically. Abstracts submitted by e-mail or fax will not be considered. All abstracts will be considered for both podium and poster presentations. The review committee will grade each submission via a blind review process, based on the criteria below and reach a decision regarding acceptance of abstracts.

- Relevance, level of interest in topic
- Quality of Scientific Content
- Quality of Clinical Content

Clinical Free Papers – Those wishing to present an Orthotic, Prosthetic or Pedorthic Free Paper should [submit here](#) to have their paper considered for presentation at the 2015 Assembly. The top scoring papers will compete for the prestigious Thranhardt Award.

Technician Program – If you would like your Technical education paper considered for submission in the Technical Track, please to [submit your paper here](#).

Business Education Program – Please [submit your business education paper here](#). The top papers will be considered for the prestigious Sam E. Hamontree, CP (E) Business Education Award.

Symposia – If you are interested in organizing a Symposium, then please [submit here](#).

Student Poster Submissions – Coming Soon

Technical Fabrication Contest Submissions – Coming Soon

Contact AOPA Headquarters at (571) 431-0876 or TMoran@AOPAnet.org with questions about the submission process or the National Assembly in general.

November 12 Webinar: Gifts: Showing Appreciation Without Violating the Law

Medicare has very specific rules about what you can and cannot do. What is and is not considered a kickback and how to acknowledge referral sources without getting into trouble. Also a general discussion of other types of activity that can be interpreted as a kickback.

- When gifts to referral sources are acceptable
- When gifts to patients are acceptable
- Federal Anti-Kickback regulation prohibitions
- Doing something nice vs. doing something illegal



The cost of participating is \$99 for AOPA members (\$199 for nonmembers) and any number of employees may partake on a given line. Attendees earn 1.5 continuing education credits by returning the provided quiz within 30 days and scoring at least 80%. [Register online.](#)

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.

Upcoming AOPA Events

- | | |
|--------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| Nov 12, 2014 | <i>Gifts: Showing Appreciation Without Violating the Law</i>
Webinar Conference
Learn more or register online here |
| Dec 10, 2014 | <i>New Codes and Changes for 2015</i>
Webinar Conference
Learn more or register online here |
| Jan 14, 2015 | <i>Fill In the Blanks: VA Contracting and the New Template</i>
Webinar Conference
Learn more or register online here |