



Talking Points – Confidential-**NOT** for Distribution- **FOR YOUR EYES ONLY**

WE ARE COMMITTED TO KEEPING THE “ASK’S” FOR AOPA POLICY FORUM ATTENDEES CRISP AND STRAIGHTFORWARD. ASK YOUR LEGISLATOR TO:

1. ENACT THE REMAINING PROVISIONS OF THE MEDICARE ORTHOTICS AND PROSTHETICS IMPROVEMENT ACT (S.1191/HR 2599) AND SIMILAR PIECES LEGISLATION (HR 4772) TO: DISTINGUISH O&P PATIENT CARE ENCOUNTERS FROM DME, RE-ASSERT THE CONGRESSIONAL DEFINITION OF ‘MINIMAL SELF-ADJUSTMENT’ FOR OTS ORTHOTICS, LIMIT PAYMENTS TO ONLY LICENSED AND ACCREDITED PROVIDERS, AND DIRECT CMS TO IMPLEMENT SECTION 50402 OF THE BIPARTISAN BUDGET ACT OF 2018 (RECOGNITION OF O&P NOTES).
2. SUPPORT THE WOUNDED WARRIOR WORKFORCE ENHANCEMENT ACT (S.1467/HR 3696), TO RAISE THE PROFILE OF O&P EDUCATION AMONG UNIVERSITIES AND PROVIDE GRANTS TO EXPAND O&P EDUCATION PROGRAMS
3. SUPPORT, THE INJURED & AMPUTEE VETERANS BILL OF RIGHTS (HR 2322), TO EDUCATE VETERANS OF THEIR RIGHT TO QUALITY PROSTHETIC AND ORTHOTIC CARE , AND NOT DENY A VETERAN HIS/HER CHOICE IN PROSTHETIC CARE

The Medicare Orthotics and Prosthetics Improvement Act

Thank Congress for acknowledging the validity of your notes and ask that they instruct Medicare and its contractors to implement the law as directed. The contractors have stated they require CMS instructions before implementing new legislation. Then stress that the Act has eight sections and only one section has been enacted into law. The remaining sections relating to minimal self-adjustment for off-the-shelf orthotics, CMS enacting BIPA regulations, and separation of O&P from DME are absolutely essential for you and your patients and must also be enacted.

Requires the Secretary to Limit Medicare Payment to Licensed and Accredited O&P Providers (A logical way to reduce fraud) (Section 8 of the Act)

Prohibits Medicare from reimbursing unlicensed providers in states that have enacted O&P licensure laws and un accredited providers in other states, and limits deemed accrediting bodies to those experienced in O&P. (Would require CMS to implement the 18 year old federal statute that Medicare only pays qualified providers [Section 427 of BIPA 2000].

Data shows that there has not been any significant change by CMS to eliminate payments to unlicensed providers in O&P licensure states. Specifically, no reduction in the proportion of payments to non-certified O&P personnel has been evidenced since 2009. In fact, the data shows an increase in the proportion of Medicare payments to non-certified personnel in licensure states. If CMS was to actively enforce the requirement that unlicensed providers cannot receive payment for providing O&P services to Medicare beneficiaries within a licensure state, Medicare savings could be realized.

Define Off-the-Shelf (Section 7 of the Act) (Also part of HR 4772)

Congress was very clear, and recognized that “off-the-shelf orthoses” are those items that can be used by the patient with “minimal **self** adjustment” by the individual user, instead of the expanded regulatory definition of minimal self adjustment (created by CMS.) The expanded regulatory definition created by CMS has resulted in the classification of many orthotic items as off-the-shelf; when in reality the items require a level of professional care to avoid potential harm to Medicare beneficiaries. It has been shown that 19% of patients who receive a Medicare paid for OTS orthotic device, subsequently receive a Medicare paid for custom-fabricated device—evidence the OTS has profound limits (this 19% of OTS devices that don’t satisfy the need is where the dollars are (since Medicare pays for two devices, not the right one the first time). Adding in devices that are not truly off-the-shelf will compound this problem

Separates O&P Care from Durable Medical Equipment (Section 6 of the Act)

Currently, O&P providers are grouped together with suppliers of durable medical equipment (DME), even though the provision of DME commodities is much different than the provision of O&P care to patients, which usually endures over many decades of treating the ongoing mobility needs of amputees or impaired patients. O&P care requires extensive follow up, which creates a clinical relationship between patients and their O&P providers. Statutorily separating orthotics & prosthetics from DME would allow CMS to create regulations that take into account O&P provider education, skill sets and patient treatment modalities

Wounded Warrior Workforce Enhancement Act

O&P programs are not high enough profile and don't generate enough money for universities for them to underwrite sufficient numbers of programs. With a significant percentage of our nation's trained and experienced orthotic and prosthetic clinicians eligible to retire in the next ten years, current O&P accredited academic institutions cannot graduate enough qualified providers to maintain the current workforce, much less the number of clinicians that will be needed to care for the aging population and Veterans with increasing health needs.

The Act will improve the quality and accessibility of O&P care by providing competitive grants (a total of \$15 million over 3 years) to academic institutions to create/expand master's and doctoral programs in O&P. These new and expanded programs will prepare more clinicians to provide advanced/sophisticated care to all (veterans and civilians). These new expanded programs will also prepare additional professors to train future generations of clinicians. This modest investment of federal dollars will not only increase the availability of O&P care but it will improve the quality of O&P care.

Veteran Bill of Rights & Veteran's Right to Choose

Despite the best intentions of many VA officials, too many veterans experience inconsistent care across the VA and are denied access to appropriate technology, the practitioner of their choice, a second opinion for prosthetic/orthotic prescription, and other safeguards. The Injured and Amputee Veterans Bill of Rights is designed to make O&P care provided under the VA system more consistent, raise awareness of O&P standards across the country, and empower veterans to ensure they receive quality care. The bill requires the VA to prominently post a list of these rights to quality prosthetic and orthotic care in every VA O&P clinic in the country, and on the VA website, so that veterans can become more aware of their rights and become their own best advocate for their care.

The VA under a proposed rule ("Prosthetic and Rehabilitative Items and Services") released in October 2017 would restrict the ability of a veteran to see the VA contracted provider of their choice for O&P care by stating that solely the VA will determine whether the VA or a VA-authorized vendor will furnish authorized items and services to Veterans. This is in direct conflict with current and longstanding VA policy as well as the Veteran's Access, Choice, and Accountability Act of 2014; which affords Veterans a measure of personal choice in whether they receive O&P services directly from the VA or from a VA contracted provider.

The proposed rule completely disregards: (1) respect for the Veteran's right, like other Americans, to participate in the choice of who they entrust with delivering key components of their health care (top VA officials agree, Secretary Shulkin has said: "Veterans should get more choice in the say of their care. Nobody should feel trapped in the VA system.); and (2) the long history of cooperation between the VA and it's contracted prosthetic and orthotic providers, as well as the clinical needs of the individual veteran, by proposing regulations that authorizes the VA to exercise sole discretion as to how prosthetic and orthotic care is delivered to Veterans.

The elimination of the veteran's right to choose to receive prosthetic and orthotic services directly through the VA or through a relationship with a contracted provider is in nobody's best interest and it is certainly not an "administrative" decision. It is a deeply personal and clinical decision that must involve input from all involved parties but especially from the veteran.