



## ACT TODAY TO PRESERVE THE HERITAGE OF THE O&P PROFESSION

### Some facts about the lawsuit AOPA filed this week challenging CMS, its contractors, RAC and Pre-Payment Audits/Physician Documentation/Medical Necessity Rules AND the AOPA Litigation and Research Fund

- Filing suit against the Medicare program is expensive—AOPA expects to spend up to \$500,000 in legal fees and that is assuming no appeals!
- In large measure because of the lawsuit, AOPA's Board made a rare mid-year adjustment to its budget—moving from a small projected surplus for 2013, and catapulting your association into an annual deficit budget of over \$400,000.
- Most lawsuits against Medicare are decided by courts not on the merits of the case, but on legal procedural grounds, e.g., a motion to dismiss on grounds of jurisdiction or rules in the statute which deny the right to contest a Medicare fee.
- If the U.S. District Court grants the relief AOPA has requested: (a) the Dear Physician letter and its physician documentation standard would be overruled; (b) the prosthetist's records alone would be deemed sufficient to establish medical necessity for prosthetic devices; and (c) HHS would be required to "reopen and reprocess all claims submitted by AOPA members that were denied based on an alleged failure to meet the documentation requirements set forth in the 'Dear Physician' letter"; (d) monies clawed back on claims paid prior to August 2011 could be refunded; and (e) CMS would be compelled to issue regulations "regarding the qualifications of suppliers of orthotics and prosthetics" as they were directed by Congress 13 years ago to do under Section 427 of BIPA.
- Bottom line, two key end points of this litigation are: (a) it holds the prospect to improve the financial status and viability of every O&P patient care practice and every manufacturer who has also been suffering the impact of the cash flow killing impact of audits; AND (b) win or lose, i.e., even if your trade association (AOPA) wins, it will have to extract a sizeable amount of funds from AOPA's reserves to pay the legal tab.

### **AOPA's Litigation and Research Fund**

The future of our profession and of health care more generally, is fraught with dangers. While AOPA has no appetite at present to jump into other litigation against the Medicare program, there is a reasonable chance circumstances may force us to change. We must realize that in this era of the Affordable Care Act needing to extract \$750 billion over the next ten years from Medicare/Medicaid reimbursements to pay for newly insured, O&P and other providers will be squeezed. The bundling of services, accountable care organizations, CMS flexing its muscle through inherent reasonableness rules, and other actions may leave us no choice but to litigate for survival. Suppose that next month (as the OIG and others have suggested) Medicare applies competitive bidding across the board to all O&P devices? Or suppose, as the OIG has also suggested, that Medicare refuses to pay one dollar more for orthotics than the lowest price on the internet for the device? Is it in the O&P profession's interest to have its trade association's resources weakened and its reserves depleted so that it may NOT be able to fight the next fight?

So we are asking everyone in the O&P field to **make an investment in the future viability of your business by helping to strengthen AOPA so it can fight similar fights in the future.** These fights will require facts based on careful and compelling research. AOPA's Board has established a new AOPA Litigation and Research Fund. Obviously, any person or company in the field can make a direct special assessment contribution to this Fund to help offset litigation costs. But AOPA's Board has established the following support guidelines:

AOPA members as well as non-members will be receiving with this letter a requested invoice for a special assessment to the Fund to protect the future of your business and your patients—in every case companies can meet the requested support in either of two ways:

- (1) Every patient care facility will receive an invoice for a special assessment contribution in an amount equal to \$100 for each patient care facility owned by the company (regardless of whether those facilities are or are not already AOPA members). Likewise, every supplier facility will receive an invoice for a special assessment contribution depending on its annual sales:

Supplier Level 1 (Less than \$1 million): \$250  
 Supplier Level 2 (\$1 million-\$1,999,999): \$750  
 Supplier Level 3 (\$2 million-\$4,999,999): \$1,250  
 Supplier Level 4 (More than \$5 million): \$2,000

**OR**

- (2) Companies that participate in the AOPA Member Get a Member Program in recruiting a new AOPA member who specifically identify another firm as responsible for convincing them to join AOPA will receive a credit against the invoice of up to \$250 for each new member who joins AOPA under the Member Get a Member Program.

The proceeds from all moneys raised from special assessment contributions received as requested above will be set aside in this new, separate AOPA Litigation and Research Fund. It will be used for the following:

- (A) replenishing AOPA reserves for the lesser of its 2013 annual deficit or its actual litigation costs paid in 2013;
- (B) payment of costs after 2013 for either this litigation on RAC and Pre-payment Audits, OR for costs of any new litigation in which AOPA engages on behalf of O&P;
- (C) If there are amounts unexpended from this Fund as of January 1, 2015, those moneys may be dedicated to new evidence-based research projects in O&P to help demonstrate the cost-effectiveness.

Your request for assessment is attached. Do the right thing for your business and the future of your profession by assuring AOPA can fight for you in the future. Pay your special assessment into the AOPA Litigation and Research Fund today....Do it because it is the right thing to do!!

**Your Fidelity to Maintaining the Viability of the O&P Profession for Future Generations of Practitioners and Our Patients Will Receive Lasting Recognition**



Significant recognition will be given to those individuals and corporate partners who support the profession and ensure the continuation of the O&P Heritage. Become a lifelong member of The Heritage Club by making a onetime payment or by recruiting a non-member to join AOPA and support the cause.

The Heritage Club plaque will honor those who treasure the profession and want to ensure its future. The Heritage Club plaque will be permanently displayed at AOPA headquarters and become part of the Association's 95+ year history. The Heritage Club plaque will be displayed annually as part of the AOPA Membership meeting and members of the Heritage Club will be honored with a ribbon to wear on their badge at the 2013 World Congress.

Won't you support the O&P Heritage Club by choosing one of the following?

- 1) Make a payment to the AOPA Litigation and Research Fund <https://aopa.wufoo.com/forms/support-the-op-profession/> ; or
- 2) Forward to AOPA your payment of the attached invoice (and as appropriate netted out by \$250 reduction as to any non-member colleague(s) who join(s) AOPA and identifies you as having been the one AOPA member responsible for recruiting them. Visit [www.AOPAnet.org/mgm](http://www.AOPAnet.org/mgm) to refer a colleague.