



American Orthotic & Prosthetic Association

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## AOPA In Advance SmartBrief

Breaking News

January 14, 2016

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### **Earn CE Credits with the January 2016 *O&P Almanac***



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The introduction of advanced, lightweight materials to lower-limb orthotics has allowed clinicians to find new ways to improve the quality of life for muscular-compromised patients. [Read More](#)

#### **President Signs Omnibus Budget Bill | Page 16**

*O&P Almanac* breaks down several recent legislative and regulatory issues affecting the O&P community. [Read More](#)

#### **Consumerism and Change | Page 28**

Throughout the health-care sector, patients are demanding more control over their treatment decisions. [Read More](#)

Read the [Compliance Corner](#) and [Reimbursement Page](#) – Earn 4 CE's  
Take the Reimbursement [Quiz here](#) and the Compliance Corner [Quiz here](#).

## CMS Issues Final Rule on Medicare Prior Authorization for Certain DMEPOS Including Most Lower Limb Prostheses

On December 29th, the Centers for Medicare and Medicaid Services (CMS) released the long anticipated final rule regarding Medicare prior authorization of certain DMEPOS, including most lower limb prostheses. The final rule, which will be published in the December 30, 2015 *Federal Register*, will be implemented 60 days after its publication.

AOPA has reviewed the final rule, and offers the following preliminary thoughts and comments regarding the provisions of the final rule.

AOPA's primary concern with prior authorization of prostheses is, and always has been, that it will critically delay timely access to the provision of prosthetic devices that are crucial to the rehabilitation needs of Medicare beneficiaries. In the final rule, CMS acknowledged that proper access to medically necessary care is of the utmost importance, but indicated that it will use sub-regulatory processes to determine appropriate timelines for making prior authorization decisions. These sub-regulatory processes are inherently arbitrary in that they do not allow for public input and or comment regarding their appropriateness. AOPA remains concerned that prior authorization of any kind will only serve to hinder the delivery of medically necessary prosthetic care within reasonable timeframes.

Another concern that AOPA expressed in its comments on the proposed rule that was not sufficiently addressed in the final rule is that **prior authorization does not equate to a guarantee of claim payment nor does it eliminate the exposure of the claim to additional audits**. While the final rule states that an affirmative prior authorization decision indicates that the required documentation for claim payment is present, it also reiterates that it is not an initial claim determination and the claim may ultimately be denied for technical reasons such as invalid proof of delivery documentation.

AOPA met with representatives from the Office of Management and Budget (OMB) in August while they were reviewing the proposed rule and registered concerns about the above issues.

The few seeming new wrinkles in the final rule is that implementation will not be immediate and universal, but there will be a Master List of 135 HCPCS codes eligible for inclusion in prior authorization. It appears there will be a phase-in process, meaning **not all 135 codes will be subject to prior authorization immediately**. Rather, the final rule indicates that CMS will establish a subset of the master list that will determine which HCPCS codes require prior authorization as part of the initial implementation of the final rule. While the master list includes lower limb prosthetic HCPCS codes that meet or exceed the \$1,000 threshold, it remains to be seen which codes will be included in the initial list of codes that will be subject to prior authorization.

While the current list does not include any orthotic codes, AOPA remains concerned that future updates to the master list may include orthotic codes that meet the criteria for inclusion in prior authorization. At first glance, the final rule does not recognize two key facts from Medicare's own data:

1. There is not a problem of unnecessary utilization of lower limb prosthetics, and the -14% reduction in prosthetics payments over the 2010-13 period proves that;
2. Today, Medicare prosthetic patients are 35% LESS LIKELY to receive an advanced tech prosthetic device than they were just 5 years ago (2005-2009).

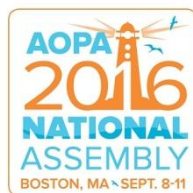
In addition, the final rule acknowledges AOPA's concern regarding the need for a more timely response to prior authorization requests but elects to define these timeframes through sub regulatory processes that do not allow for public comment or input.

While AOPA will review the final rule more closely in the coming days, After its preliminary review, AOPA believes that the final rule fails to address AOPA's concerns regarding the implementation of a prior authorization program that:

- 1. Does not appear to constitute a guarantee of payment; and**
- 2. Retains the payment threshold of \$1,000 for inclusion in prior authorization**
- 3. Does not assure that providers would not be subject to post-payment/RAC audits on the very same issue of medical necessity; and**
- 4. Uses sub-regulatory processes to define appropriate timeframes for response to prior authorization requests; and**
- 5. Exceeds its authority to initiate a limited pilot on prior authorization, done only in selected areas (as was done with power mobility devices) to a national policy impacting all amputee beneficiaries nationwide.**

AOPA will provide additional analysis of the final rule as it becomes available.

**Present at the 2016 National Assembly in Boston**



**AOPA National Assembly and New England Chapter Meeting  
John B. Hynes Veterans Memorial Convention Center in Boston, MA  
September 8-11, 2016**

The 2016 Planning Committee is seeking high-quality education presentations for the combined 99<sup>th</sup> Annual AOPA National Assembly and New England Academy Chapter Meeting to be held September 8-11, 2016 at the Hynes Convention Center in downtown Boston, MA.

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 2016 National Meeting. All free paper abstracts for the 2016 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

**Submission Deadline** – The submission deadline is March 31, 2016.

**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 2016 National Meeting. The top scoring papers will compete for the prestigious Thranhardt Award.

**Technician Program** – If you would like your Technical presentation considered for the Technical Education Track, please [submit your paper here](#). The planning committee is specifically looking for fabrication techniques to be presented in the form of a “cooking show” style demonstration. Please contact us with questions [assembly@aopanet.org](mailto:assembly@aopanet.org) or 571-431-0808.

**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](#). Scientific Symposia should present thematically related research addressing significant problems or controversies in Orthotics, Prosthetics or Pedorthics. The symposium should bring together one or more of the world's leading researchers to present current developments and planned research directions. Where appropriate, symposium should present differing points of view on a particular topic.

**Student/Resident Poster Submission:** AOPA invites students and residents to present orthotic/prosthetic research findings or a particular case study via a poster presentation. When students and/or residents submit an abstract for a poster, they are entered to win one of two prestigious awards--The Otto and Lucille Becker Award will be presented for the best orthotic abstract submitted and the Edwin and Kathryn Arbogast Award for the best prosthetic abstract submitted by a qualifying student or resident.

- ✓ The poster must be exhibited and presented at the AOPA National Assembly for the award recipient to receive the prize. The winners of the two scientific poster awards will be published in the O&P Almanac.
- ✓ The winners will receive a \$500 cash award, registration to the show, coach-class airfare to the National Assembly and three nights hotel. To qualify to present a poster in this category and eligible for consideration for this award, the main author must be a student (baccalaureate or masters level) or a resident at a qualified patient care facility.
- ✓ Abstracts will not be considered for either award if they have been previously presented, published, or are currently submitted with pending decision on acceptance elsewhere.
- ✓ These awards have been made possible by a special endowment by Becker Orthopedic and WillowWood.
- ✓ The Award Winner's associated school will also be honored with an award.

Please [submit your poster paper here](#).

Questions? Contact Tina Moran at [tmoran@aopanet.org](mailto:tmoran@aopanet.org) or (571) 431-0808.

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

### **BOC Board of Directors Elects New Board Chair, Executive Committee, and Members**

The Board of Certification/Accreditation (BOC) recently announced the results of elections for its 2016 Board of Directors, Chair, and Executive Committee (EC).

L. Bradley “Brad” Watson, BOCO, BOCP, LPO, was elected Chair. Watson is an owner/practitioner at Clarksville Limb & Brace and Rehab, Inc. in Clarksville, Tennessee and is a second-generation BOC Orthotist and Prosthetist with over 24 years of experience. He joined the BOC Board in 2012 and most recently served as Secretary.

BOC President & CEO, Claudia Zacharias, MBA, CAE, commented, “I am confident that Brad will continue to advance BOC’s strategic imperatives with integrity and professionalism.” Joining Watson on the Board’s Executive Committee will be:

- **Vice-Chair:** Rod Borkowski, CDME, General Manager of Health Essentials DME, Costa Mesa, California
- **Secretary:** Wayne R. Rosen, BOCP, BOCO, FAAOP, former owner of W.R. Rosen, Inc., Fort Lauderdale, Florida
- **Treasurer:** Shane Ryley, BOCP, BOCO, Area Clinic Manager at Hanger Orthopedic Group, Torrance, California
- **Re-elected as Member-At-Large:** William J. Powers, MBA, LFACHE, retired Chief Operating Officer of the American Nurses Association and Colonel, Retired, United States Air Force, Medical Service Corp., Midlothian, Virginia
- **Immediate Past Chair:** James L. Hewlett, BOCO, who has owned, operated, and served as a consultant for both DME and O&P facilities, Redding, California

### **Jurisdiction A DME MAC Contract Awarded to Noridian Health Solutions, LLC**

On December 16, 2015, the Centers for Medicare and Medicaid Service (CMS) announced that Noridian HealthCare Solutions, LLC. was awarded a contract to serve as the Jurisdiction A Durable Medical Equipment Medicare Administrative Contractor (DME MAC). Noridian currently holds contracts to serve as the Jurisdiction D DME MAC as well as the Pricing, Data Analysis, and Coding Contractor (PDAC) and will replace National Heritage Insurance Corporation (NHIC) as the Jurisdiction A DME MAC contractor.

While no contract award protests have been filed as of yet, it is highly likely that one or more of the companies that submitted proposals to CMS to serve as the Jurisdiction A DME MAC will formally protest the award to Noridian which will result in a delay in the final award of the contract.

With the December 16<sup>th</sup> announcement, the number of contractors responsible for processing Medicare DMEPOS claims may ultimately be reduced to two, as CMS announced in September of 2015 that the contract to serve as the Jurisdiction B DME MAC was awarded to CGS, which currently serves as the Jurisdiction C DME MAC. This award was immediately protested by National Government Services, the incumbent contractor for Jurisdiction B and the protest has not

yet been resolved. AOPA will continue to follow developments regarding both of these contract awards and will communicate any new information to its members as it becomes available.

Questions regarding this issue may be directed to Joe McTernan at [jmcternan@aopanet.org](mailto:jmcternan@aopanet.org) or Devon Bernard at [dbernard@aopanet.org](mailto:dbernard@aopanet.org).

**Congress Close to a Deal on Funding of the Federal Government; Modest Potential Impact on O&P and Suspension of Medical Device Excise Tax for Non-O&P in Play**

On Wednesday, December 16<sup>th</sup>, President Obama signed a short term spending measure that will allow the Federal government to continue to operate until December 22, allowing Congress to finalize its long anticipated Omnibus appropriations and tax break extender legislation that will fund the Federal government for the remainder of the 2016 fiscal year. Two important provisions of this legislation that are of significance to O&P are the limitation of Medicaid reimbursement rates for Durable Medical Equipment to current Medicare rates and a 2 year moratorium of the 2.3% medical device excise tax.

The provisions that would limit Medicaid reimbursement for DME to current Medicare rates may result in significant reductions in Medicaid payments for DME due to significant reductions in Medicare payments as a result of competitive bidding. These provisions would not have an immediate impact on O&P services since they are not currently included in current competitive bidding programs. If CMS eventually acts to exercise its sole competitive bidding authority as to O&P, i.e. if CMS were to incorporate off the shelf (OTS) orthoses into future competitive bidding programs, it would also likely result in a significant impact reducing Medicaid payments for this limited category of OTS (only) orthotic devices in the future.

The second provision would create a 2 year moratorium of the 2.3% medical device excise tax, a tax that AOPA has opposed since its inception. While this would be good news for the DMEPOS industry in general, it is important for AOPA members to recognize three facts relative to the pending deliberations on the omnibus bill, and the provision calling for a two-year moratorium of the 2.3% medical device excise tax:

1. AOPA's efforts with the Department of Treasury and the IRS secured a decision in 2012 that recognized, from the very inception of the medical device excise tax, that O&P devices are, and remain exempt from the tax at both the manufacturer and patient care facility levels.
2. Nonetheless, AOPA has consistently advocated the complete elimination/repeal of the medical device excise tax as it is an unnecessary burden on all medical device companies, and thereby, upon all of American health care.
3. Whether or not the pending omnibus spending bill is actually enacted in its current form and results in a two-year moratorium of the medical device excise tax or not, the long-standing, permanent exemption secured for O&P in 2012 remains fully in force and applicable without change. The O&P exemption is completely distinct and independent of the current discussions on suspending the 2.3% tax that has been applicable to virtually all others selling medical devices.

AOPA will continue to monitor the status of the pending omnibus bill as it moves closer to passage, presumably next week.

Questions regarding this issue may be directed to Joe McTernan at [jmcternan@aopanet.org](mailto:jmcternan@aopanet.org) or Devon Bernard at [dbernard@aopanet.org](mailto:dbernard@aopanet.org).

<b>Upcoming AOPA Events</b>	
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January 25-26, 2016	Mastering Medicare: Essential Coding & Billing Techniques Seminar Tampa, FL <a href="#">Learn more or register here</a>
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February 10, 2016	<i>SNF Billing: Beyond the Basics (The Ins and Outs)</i> AOPA Webinar <a href="#">Learn more or register here</a>
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March 9, 2016	<i>Shift the Liability: The Proper Use of the ABN Form Pass</i> AOPA Webinar <a href="#">Learn more or register here</a>
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