AOPA In Advance SmartBrief
Breaking News
January 5, 2016

AOPA Headlines:

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 it 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 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.

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 16th 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 or Devon Bernard at 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 16th, 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.

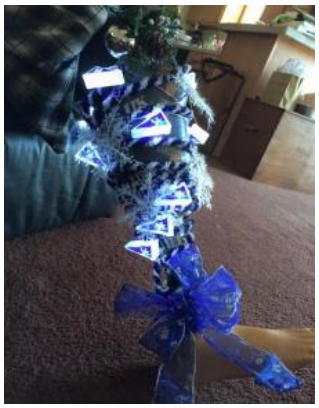
2. Nonetheless, AOPA has consistently advocated the complete elimination/repeal of the medical device excise tax as it is an unnecessary burden on all medical device companies, and thereby, upon all of American health care.

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 or Devon Bernard at dbernard@aopanet.org.

The Prosthetix Shop Announces Contest Winner



The Prosthetix Shop held a prosthetic "Light Up Your Limb" contest during the holiday season. Participants sent in photos of their decorated prostheses to meet the midnight deadline of New Year's Eve. On Monday, January 4, 2016, the Prosthetix Shop announced Jack Fultz the winner of the "Light Up Your Limb" contest with the prize of $150. Congratulations to Jack Fultz. View his creative display to the left.

Jurisdiction B Releases Pre-Payment review Results for Spinal Orthoses

The National Government Services, the Jurisdiction B DME MAC, recently released results of its ongoing widespread pre-payment review for spinal orthoses.

Between July 1, 2015 and September 30, 2015, a total of 289 claims were reviewed. 60 claims were allowed and 229 claims were denied, resulting in a claim error rate of 79.24%. The majority of the claim denials were due to a lack of medical necessity documentation or missing proof of delivery documentation. It is important to note that many of the proof of delivery denials were due to there being no proof of delivery at all as opposed to an incomplete or non-compliant proof of delivery.

While the overall claim denial rate of 79.24% represents a significant reduction from previous quarters, where denial rates were as high as 97%, the denial rate is still too high to consider reducing or eliminating pre-payment audits for spinal orthoses.

AOPA would like to remind our members of the importance of obtaining and maintaining Medicare compliant documentation in order to support your Medicare claims.

Regulatory Updates - Two Bills of Interest to O&P Introduced in Congress

The long-awaited Senate Finance Committee AFIRM bill has been introduced by Chairman Hatch as S. 2368. This bill has a potential companion discussion draft—a series of additional steps is being advanced for the consideration of the Senate Committee, and this Discussion Draft includes a number of provisions that are of particular interest to AOPA members, and the broader O&P community including our patients. In the AFIRM bill and the Discussion Draft—you will see, for example, inclusion of the orthotist/prosthetist notes language, the separation of O&P from DME, and the minimal self-adjustment language in the Discussion Draft (but not presently in S. 2368). As to S. 2368 itself, there is clearly less there that would be a plus for the O&P community, but the provisions from the discussion draft would be beneficial to O&P.

Rep. Tom Price, (R-GA) has introduced H.R. 4185, the Protecting Access through Competitive-pricing Transition Act. Rep. Price is on the House Ways & Means Committee, is the Chair of the House Budget Committee, and is himself an orthopedic surgeon. In H.R. 4185 he articulates his vision for a pricing model alternative to competitive bidding. On the last two pages of his bill, he has included language of importance to AOPA and O&P with respect to clarifying the meaning of 'minimal self- adjustment' for OTS orthotics.

Order the 2016 Quick Coder Set Now Available

Order your 2016 Quick Coder Set Today. Stop searching through numerous pages to find a code! AOPA's redesigned Quick Coder provides a speedy reference to the HCPCS orthotic, shoe and prosthetic codes and modifiers. These laminated cards are durable, long-lasting and convenient to store. The 2016 Quick Coders sell for $30 to AOPA members and $80 for non-members. Order the 2016 Quick Coder here.

Register for the AOPA Webinar Next Week!

WEBINAR WEDNESDAYS

Register for AOPA's 2016 Webinar Series and earn 1.5 credits each month. Register for the Whole Series and get 2 free Webinars! Just $990 for members and $1990 for non-members.

2016 Webinar Topics

January 13: Prepayment Reviews: What You Need to Know to Pass

February 10: SNF Billing: Beyond the Basics (The Ins and Outs)

March 9: Shift the Liability: The Proper Use of the ABN Form

April 13: Understanding Shoes, Mastectomy, & Other Policies

May 11: When Things Go Wrong: Making Lemonade out of Lemons

June 8: Physician Documentation: How to Get It & How to Use It

July 13: Strategies and Levels: How to Play the Appeal's Game

August 10: The Supplier Standards: Are You Compliant?

September 14: Fill in the Blanks: Know Your Forms

October 12: KO Policy: The ABC's of the LCD and PA

November 9: Don't Miss Out: Are You Billing For Everything You Can?

December 14: New Codes and What Lies Ahead for 2017

REGISTER NOW

Upcoming AOPA Events

January 13, 2016	*Pre-Payment Reviews: What You Need to Know to Pass* AOPA Webinar Learn more or register here
January 25-26, 2016	Mastering Medicare: Essential Coding & Billing Techniques Seminar Tampa, FL Learn more or register here
February 10, 2016	*SNF Billing: Beyond the Basics (The Ins and Outs)* AOPA Webinar Learn more or register here