AOPA In Advance SmartBrief
Breaking News
September 27, 2016

AOPA Headlines:

HHS Request to U.S. District Court Rejected

O&P and Others Subject to RAC Audits Greatly Interested by U.S. District Court Decision to Reject an HHS Request for Delay of Court Action in Hospital Suit Challenging ALJ Delays in Excess of Statutory 90 Days

A Quick Synopsis
In 2014, the American Hospital Association filed suit in the federal District Court seeking relief because HHS and the Office of Medicare Hearings and Appeals (OMHA) have for many years egregiously exceeded the statutory provision which assures a provider who must return money to Medicare as a result of an audit a final ALJ decision within 90 days after filing a request for ALJ appeal. Originally, the District Court dismissed the case, but early this year the D.C. Circuit Court of Appeals reversed that decision and ordered that the case should go forward in the District Court.

HHS/OMHA asked for a delay of over a year (until September 30, 2017) citing proposed regs (to which both AOPA and the O&P Alliance responded) intended to reduce the backlog--which are somewhat problematic in their own right. The Court ruled not to

approve HHS' request for such a delay, but rather that case will go forward with a hearing in two weeks.

Court Sees Likelihood that the Backlog and Delay in ALJ Decisions Will Grow, Despite Various Efforts by HHS/OMHA Proposed Rule

In his ruling rejecting the HHS request for delay, District Court Judge Boasberg said that even with the administrative changes proposed by HHS/OMHA, it would not reverse the backlog, but rather that the ALJ backlog/delay would nonetheless probably get worse, not better over several years. The increased claim settlement efforts, and appointing attorneys to undertake adjudication of appeals in the proposed regs, would, the Court said, at best reduce the growth of the backlog. The specifics of the delay are daunting. Without any remedial actions by either HHS/OMHA or Congress the projected number of appeal cases awaiting ALJ hearing would reach nearly 1.1 million. HHS reports average delay in 2016 is 850 days, but OMHA says in the third quarter of this year it took 935 day for appeals to get through the first three levels of appeal, not getting to a final ALJ decision. Reports from O&P patient care appellants seems to run closer to 4 years waiting time to get to an ALJ decision! HHS proposed changes to the RAC program, but these would impact just 7 percent of RAC cases. Finally, the judge underscored that several Congressional initiatives, e.g., the AFIRM bill had not moved much closer to enactment in the 7+ months since the Circuit Court of Appeals decision, nor did it appear likely that significant budget increases to hire substantially more ALJs would be enacted anytime soon.

The Appeals of RAC Decisions, and the Related Interest Due if Provider Wins May Be Making the Program Much Less Financially Beneficial to the Federal Government Than Many Think

As a report from Dobson-DaVanzo last year demonstrated, with the long ALJ delays, coupled with the 11% annual interest payable by the government on the amount the government recouped if the provider prevails, the actual yield to the government from the audits is greatly reduced, and perhaps close to being fully consumed by its costs. For example, RAC auditors receive something in range of a 13% bounty on whatever they claw back. If the case is reversed after the ALJ decision 4 years later, CMS would pay the 11%, which when compounded amounts to a 51.8% interest over the 4 years. In this scenario CMS may be able to secure the return of the RAC auditor commissions. Dobson-DaVanzo's work identified at least 58% of O&P RAC appeals are won at the ALJ level (this is the highest success rate among all provider subgroups, and could perhaps be higher, as only verified ALJ wins could be affirmatively identified)-this coupled with the above large interest due, would appear to largely obliterate any net long-term CMS gains from all the RAC efforts in O&P.

One concluding note is that two bills supported by AOPA would help alleviate some of the adverse impact of RAC audits on O&P professionals. S.829/H.R. 1530 would assure that CMS must recognize the orthotist/prosthetist notes of patient visits as a legitimate part of the medical record for purposes of determining medical necessity. H.R. 1526 would help reduce the cash flow devastation of audits and extended wait for appeals by establishing

the maximum amount of recoupment that CMS could claw back **before** a final ALJ appeal decision to 50% of the contested amount until such time as HHS/CMS/OMHA are operating within the clear terms of the statute and assuring delivery of final ALJ decisions within the stated 90 days.

Contact Joseph McTernan with any questions at 571/431-0811 or jmcternan@aopanet.org.

Celebrate Health Professions Week for O&P!

How are you and your business celebrating Health Professions Week on September 26 – 30th? Post pictures on facebook and twitter to share how you celebrate. AOPA would like to sincerely thank all of those who work and volunteer in the health profession field, your contribution is appreciated and readily needed.

Contact Your Representative to Support the Medicare O&P Improvement Act

We need you help in urging support for S. 829/HR 1530: The Medicare O&P Improvements Act. This bi-partisan bill that provides common sense solutions to reduce fraud. AOPA Executive Director Tom Fise has been meeting with legislators on the Hill to urge their support, but they need to hear from constituents. Read the full bill here.

These are some of the provisions included in the bill:

- Requires Medicare to reimburse only those orthotic and prosthetic providers who are licensed (in states that require licensure) or accredited (applicable in all non-licensure states) to provide orthoses and prostheses
- Recognizes the value of the Orthotist's or Prosthetist's Notes in the Medical record;
- Assures due process rights to improve proper Administrative Law Judge (ALJ) time frames;
- Reinstates and clarifies the statutory definition of "Minimal Self Adjustment" for Off-the-Shelf Orthoses to protect Medicare beneficiaries;
- Distinguishes Orthotists and Prosthetists from Suppliers of Durable Medical Equipment (DME);
- Requires greater transparency and granularity in CMS data availability about audit outcomes.

Send a letter to Congress showing your support.

Jurisdiction D DME MAC Published Audit Results

Noridian Healthcare Solutions, LLC, who serves as the Jurisdiction D DME MAC, has recently released results of some of its ongoing pre-payment audits for O&P services. The published results include those related to spinal orthoses, knee orthoses, AFOs, and

therapeutic shoes billed during the second quarter of 2016. Summaries of the audit findings are below:

Spinal Orthoses
Pre-payment review of spinal orthoses described by HCPCS codes L0631 and L0637 resulted in an overall error rate of 99%. Common reasons for denial included lack of documentation of the need for a custom fitted orthosis, improper proof of delivery documentation, and failure to respond to requests for additional documentation.

Knee Orthoses
Pre-payment review of knee orthoses described by HCPCS code L1833 resulted in an overall denial rate of 92%. Common reasons for denial included lack of objective documentation of knee instability, improper reporting of a correct diagnosis code, improper proof of delivery documentation, and failure to respond to requests for additional documentation.

AFOs
Pre-payment review of AFOs described by L1960 resulted in an overall denial rate of 73%. Pre-payment review of AFOs described by L1970 resulted in an overall denial rate of 78%. Pre-payment review of AFOs described by L4360 resulted in an overall denial rate of 98%. Common denial reasons included lack of documentation of a need for a custom device rather than a prefabricated device (L1960 and L1970), lack of documentation regarding modifications that were made to custom fit the device (L4360), failure to respond to requests for additional documentation, and no proof of delivery documentation.

Therapeutic Shoes
Pre-payment review of therapeutic shoe claims resulted in an overall denial rate of 76%. Common reasons for denial included lack of documentation from the certifying physician, lack of proof of an in-person fitting visit with the supplier of the shoes, and failure to respond to additional documentation requests.

The high denial rates for all of these pre-payment reviews mean that claims for these HCPCS codes will remain under pre-payment review going forward. It is important to remember that many of these denials may have been avoided by responding to requests for additional documentation or ensuring that proof of delivery documentation meets Medicare's published requirements.

O&P PAC Corner

The O&P PAC would like to acknowledge and thank the following **AOPA** member(s) for their recent contributions to the O&P PAC:

- Michael Allen, CPO, FAAOP
- Ryan Arbogast
- Rudy Becker
- Dale Berry, CP
- Frank Bostock, CO
- Bret Bostock, CO

- Erin Cammaratta
- James Campbell, PhD., CO, FAAOP
- Kenneth Cornell, CO
- Charles Dankmeyer, CPO
- Thomas DiBello, CO, FAAOP
- Mark Edwards, CP
- Arlene Gillis, CP, FAAOP
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- Eileen Levis
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- Bradley Ruhl
- Scott Schneider
- Andreas Schultz
- Frank Snell, CPO, FAAOP
- Chris Snell
- Clint Snell, CP
- Mike Sotak
- Gordon Stevens, CPO
- Thomas Watson, CP
- James Weber, MBA
- Eddie White, CP
- Pam Young

The purpose of the O&P PAC is to advocate for legislative or political interests at the federal level, which have an impact on the orthotic and prosthetic community. The O&P PAC achieves this goal by working closely with members of the House and Senate to educate them about the issues, and help elect those individuals who support the orthotic and prosthetic community.

In order to participate in the O&P PAC, federal law mandates that you must first sign an authorization form. To obtain an authorization form contact Devon Bernard at dbernard@AOPAnet.org or click here.

Also, the O&P PAC would like to acknowledge and thank the following **AOPA** member(s) for their recent support of an O&P PAC sponsored event(s):

- David Boone, PhD.
- James Campbell, PhD., CO, FAAOP
- Charles Dankmeyer, CPO
- Thomas DiBello, CO, FAAOP
- A.J. Filippis, CPO
- Thomas Fise, JD
- Rick Fleetwood
- Robert Leimkuehler, CPO
- Michael Oros, CPO, FAAOP
- Bradley Ruhl
- Steven Rybicki
- James Weber, MBA

Please stay tuned for a special thank you for those who supported the 9th Annual Wine Tasting & Auction supporting AOPA's government relations efforts, and an updated list of O&P PAC supported candidates.

Now Available: 2016 Operating Performance Report

AOPA Releases Results from Member Benchmarking Survey

Are you curious about how your O&P business is performing compared to others? Have you been asking questions like these?

- *How does our spending on materials, advertising or other expenses compare with other companies similar to ours?*
- *Is our gross margin better or worse than other facilities of the same size?*
- *Are our employees generating enough sales?*

Copies of the **2016 Operating Performance Report** are now available. The annual report provides a comprehensive financial profile of the O&P industry including balance sheet, income statement and payer information organized by total revenue size, community size, and profitability. This year's data was submitted by more than 88 patient care companies representing 1,164 full time facilities and 71 part-time facilities.

For those wanting to learn more about using benchmarking data to strengthen their business, a seasoned panel of experts will present "The Top 5 Things to Know About Your Business to Survive and Succeed" at the 2016 Assembly in Boston on Friday September 9, 2016 from 4:00-5:00 PM. Current and historical operating performance data will also be used to illuminate trends taking place in the O&P industry.

2016 Operating Performance Reports are available electronically or print in AOPA's bookstore.
2016 Operating Performance Report (Electronic) member/nonmember $185/$325
2016 Operating Performance Report (Print) member/nonmember $285/$425

To order your copy, visit https://www.aopanetonline.org/store.

DME MAC Billing Reminder: Miscellaneous Codes

The DME MACs recently released a joint billing reminder informing suppliers of what information must be included with any claim containing a miscellaneous/unspecified/not otherwise classified (NOC) codes; these codes include the L0999, L1499, L2999, L3649, L3999, A5507, A6549, L5999, L7499, L8039 and L8499.
When billing for the above codes you must include the following information:

- Concise description of the item or service
- Manufacturer name
- Product name and number
- Supplier Price List (PL) amount
- HCPCS code of related item (if applicable)

Claims billed with miscellaneous codes without this information will be denied for missing/incomplete/invalid information, and in certain instances the claim will not even be adjudicated and will be rejected. If a denial or rejection occurs you will need to resubmit the claim with the missing information.

AOPA is currently seeking clarification on certain aspects of the announcement and will keep members posted on its findings.

To see where this information should be placed on your electronic claims or your paper claims please review the joint billing reminder here.

Questions? Contact Devon Bernard at dbernard@AOPAnet.org or Joe McTernan at jmcternan@AOPAnet.org.

November 9 Webinar: Don't Miss Out; Are you Billing for Everything You Can?

Nov. 2016

9

1:00 PM Eastern

Cost

- $99 for AOPA Members/
- $199 for Non-Members
- (Members use promo code 'member')

Date

- Wed, September 14, 1:00 PM EST

Join AOPA for a one hour webinar and earn 1.5 CEs, while learning everything you need to know about appeals. During this webinar, an AOPA expert will answer these questions:

- Learn how to bill for returned/refused items
- Learn how to get paid for repairs and adjustments

- Learn how to get paid for miscellaneous codes
- Learn how to bill for evaluations
- Learn about other possible missed billing opportunities

REGISTER

Join the Coding & Billing Experts in Las Vegas!

The AOPA Coding & Billing Experts are Coming to Las Vegas!

AOPA's next Coding & Billing Seminar will be in Las Vegas! Don't miss this opportunity to get the most up-to-date information to advance your O&P practitioners' and billing staff's coding knowledge.

Join your Colleagues November 14-15 in Las Vegas!

At this seminar you will:

- **Receive up-to-date information on Prior Authorization and other Hot Topics**
- **Ensure your Proof of Delivery meets Medicare Requirements**
- **Learn how to assess risk areas in your practice**
- **Learn successful appeal strategies and hints to avoid claim denials**
- **Practice coding complex devices, including repairs and adjustment**
- **Attend break-out sessions for practitioners and office staff**
- **Earn 14 CEs**

Register Now

Upcoming AOPA Events

October 12, 2016 — *KO Policy: The ABCs of the LCD and PA*
AOPA Webinar
Learn more and register here

November 9, 2016 — *Don't Miss Out: Are You Billing For Everything You Can?*
AOPA Webinar
Learn more and register here

November 14-15, 2016 — *Coding & Billing Seminar*
Las Vegas, NV
Learn more and register here