



## Washington Highlights March 2012

### **AOTA Hosts Successful Congressional Briefing on Occupational Therapy in Mental Health**

On March 19, 2011 AOTA hosted a successful Congressional staff briefing in the Cannon House Office Building sponsored by Congressman Paul Tonko (D-NY) in support of the Occupational Therapy Mental Health Act (HR 3762).

The room was filled near capacity with Congressional staff and representatives from other national associations including the American Psychiatric Association (APA) and the National Alliance on Mental Illness (NAMI). The panelists lead a compelling and informative hour long discussion focused on the important clinical role that the nation's occupational therapists play in helping patients/consumers recover from serious mental illnesses like schizophrenia, bipolar disorder, major clinical depression and PTSD and achieve optimal functional performance in their everyday lives.

- Jeffery S. Janofsky, M.D., Associate Professor, Director, Psychiatry and Law Program, John Hopkins University School of Medicine, Baltimore, MD.
- Dr. Ginny Stoffel, Associate Professor, Center for Addiction and Behavioral Health Research, University of Wisconsin – Milwaukee
- Shira Zapinsky, Towson University Class of 2012, Towson, MD, MS in Occupational Therapy
- Brooke Ward, MOT, OTR/L., Baptist Memorial Hospital in Memphis, TN.

Visit [AOTA's Legislative Action Center](#) and contact your members of Congress to urge their Co-sponsorship and support the OT Mental Health Act (HR 3762)

### **Save the Date! AOTA Capitol Hill Day 2012- September 24**

Make your plans to join your colleagues from around the country to advocate for OT. Help us make Hill Day 2012 AOTA's largest grassroots advocacy day ever. Check [AOTA's Legislative Action Center](#) for additional details and feel free to contact [fad@aota.org](mailto:fad@aota.org) for more information.

## **Supreme Court Hears Case on Affordable Care Act**

The Supreme Court of the United States (SCOTUS) heard three days of oral arguments on four constitutional issues related to the Affordable Care Act (PL 11-148). The decision of the court, scheduled for June will determine the fate of the Affordable Care Act and ultimately the future of the entire health care system.

A quick rundown of the 4 constitutional questions:

- 1. Is the individual mandate requiring nearly all American to purchase insurance Constitutional?**
- 2. Is this coverage Mandate equivalent to a tax?**
- 3. Can the individual mandate be “severed” from the rest of the law?** If this is not the case the entire Affordable Care Act would need to be struck down if the mandate is determined to be unconstitutional
- 4. Is the Medicaid expansion constitutional?** Critics hold this provision should be considered a coercive measure by the Federal government to force states to cover new populations in order to receive Federal Medicaid funding.

Based on the oral arguments and questions asked by the Justices it remains unclear how the court will rule on these issues.

## **Chairman Paul Ryan Introduces House Republican Budget**

House of Representatives passed Budget Committee Chairman Paul Ryan (R-WI) passed the Republican House 2013 budget proposal. Similar to the 2012 Republican budget, this plan would fundamentally change Medicare and Medicaid and identify savings from these and other federal programs including rail projects, research and Pell Grants for low-income college students. This proposal would:

- Transform Medicare by privatizing it and converting it to a voucher program, which will require seniors to pay more and more as they get older;
- Restructure Medicaid as a block grant; and
- Repeal the Affordable Care Act

Visit the [House Committee on the Budget](#) for additional information on Chairman Ryan’s budget for 2013

## **The Medicare Part B Outpatient Therapy Cap Exceptions Process Extended Through 2012**

AOTA achieved yet another victory in achieving an extension of the exceptions process through the remainder of 2012. The House and Senate have passed the Middle Class Tax Relief and Job Creation Act of 2011 (P.L. 112-96) that extends the Medicare Part B Outpatient Therapy Cap Exceptions process through December 31, 2012. The law also avoids the scheduled 27.4% cut to the Medicare Physician Fee Schedule and extends current payments through 2012.

AOTA worked closely with leaders in both the House and Senate to achieve the extension of the exceptions process and succeeded in shaping several provisions in the bill. While the exceptions process has been extended through December 31, 2012 the legislation also creates some changes to the process of which AOTA members should be aware:

- The KX modifier must now be used on all claims exceeding the statutory level of the cap which is \$1880 for 2012. Congress included this requirement because they noted that CMS contractors were not always requiring use of the modifier on claims exceeding the cap. The KX modifier is intended to note spending beyond the level of the cap and, more importantly, to attest to the medical necessity of those services.
- Effective October 1, 2012 all therapy claims above and below the level of the cap must include the national provider identifier (NPI) of the physician responsible for certifying and periodically reviewing the plan of care.
- Also effective October 1, 2012 all claims exceeding \$3700 will be subject to what the new law states is a “manual medical review process.” The bill notes that this process should be similar to the manual review under the original exception process instituted in 2006. Only about 5% of Medicare beneficiaries receiving therapy exceed \$3700 in therapy per calendar year. While the 2006 manual review process required precertification it is AOTA’s understanding that precertification was not Congress’s intent nor did CMS want to institute precertification of therapy claims at any level. AOTA is working to clarify Congressional intent. The law requires CMS to consult with stakeholders regarding development of the review process and AOTA will be at the table.
- No later than October 1, 2012 the therapy cap of \$1880 with exceptions will be applied to hospital outpatient department (HOPD) settings. This cap however will expire on December 31, 2012. HOPD settings were exempted from the cap to allow a safety net for beneficiaries if and when other outpatient settings were subject to the cap. Extending the temporary cap to HOPD with exceptions creates a uniform system of utilization control across all outpatient settings and does not restrict access to medically necessary care. Initially a permanent HOPD cap was proposed but AOTA’s leading role in opposition resulted in this important victory that protects patient access. In addition, the temporary cap with exceptions does not create further financial barriers to action on the cap in the future that would have been created by a permanent cap on HOPD settings.
- The legislation also requires two reports on outpatient therapy to be completed in 2013. Congress directs the Medicare Payment Advisory Commission (MedPAC) to complete a report by June 15, 2013 that recommends payment reforms that better reflect acuity, condition and the

therapy needs of the patient. MedPAC is also instructed to include an examination of private sector initiatives related to therapy benefits in their report. The Government Accountability Office (GAO) is also directed to issue a report regarding the manual medical review process instituted by the law. The report must detail the number of beneficiaries subject to the process, the number of reviews conducted and the outcome of the reviews.

- Finally on January 1, 2013 CMS is required to begin collecting additional data on therapy claims related to patient function during the course of therapy in order to better understand patient conditions and outcomes. The use of the word “function” presents opportunities to showcase the results of occupational therapy.

AOTA believes that the legislation is a step forward in identifying an alternative payment system for outpatient therapy that will result in elimination of the arbitrary therapy cap. While several changes are included to the exceptions process, a path to accessing medically necessary care will be available for all Medicare beneficiaries and for the providers serving them. Additional information regarding implementation of the enhanced exception process will be available as CMS releases additional information. AOTA will provide guidance to our members to ensure their Medicare clients can continue to receive the right amount of occupational therapy at the right time so that they can continue to live life to its fullest.

### **House Votes to Repeal the Independent Payment Advisory Board**

The House voted to repeal the Independent Payment Advisory Board created by the Affordable Care Act (PL 111-148) with a 223-181 vote. This is considered a symbolic votes as this legislation is currently considered dead on arrival in the Democrat held Senate. .

AOTA currently supports repeal of the IPAB over concerns about granting prescriptive authority to an unelected body whose decision could adversely affect overall quality and access to critical care including occupational therapy.

For more information on IPAB visit the [White House web-site](#) and an independent perspective from the [Heritage Foundation](#).

### **AOTA Participates in Brain Injury Awareness Day**

AOTA staff participated in several events surrounding Brain Injury Awareness Day including a stakeholders meeting, Congressional briefing and reception. These efforts were focused on educating Members of Congress and their staffs and raising overall awareness about traumatic brain injury, and effective treatments and interventions including occupational therapy.

AOTA is committed to continued efforts, in concert with other stakeholder groups to educate members of Congress about this critical issue and to insure beneficiaries who have suffered a TBI have access to the full spectrum of care including occupational therapy.

### **AOTA Works to Secure Falls Funding**

Representatives from AOTA and the National Council on Aging met with Congressman Ralph Hall's (R-TX) office to discuss falls, falls prevention and falls prevention funding. Representative Hall has championed this issue in the past with introduction of H.R. 5608 the Keeping Seniors Safe from Falls Act of 2006.

AOTA along with the falls free coalition will continue to work with Representative Hall and others to secure adequate funding levels in future federal budgets for falls prevention and to advance the overall falls free agenda.

Visit the [National Council on Aging's \(NCOA\)](#) web-site for additional information regarding falls, falls prevention and our current advocacy efforts

### **AOTA Supported Legislation**

#### **Support the Occupational Therapy Mental Health Act**

On December 23, 2011 Representative Paul Tonko (D-NY) along with Representative Jan Schakowsky (D-IL) introduced the Occupational Therapy Mental Health Act (HR 3762). This important measure will make occupational therapists eligible to participate in the National Health Services Corps [NHSC] Scholarship and Loan Repayment Programs as behavioral and mental health professionals.

This is a significant first step towards solidifying occupational therapy's role in the provision of quality mental health services. Visit [AOTA's legislative action center](#) to urge your members of Congress to support this critical issue

#### **Make Occupational Therapy an Initiating Service**

On July 8, 2011 Representatives Charles Boustany (R-LA) and John Lewis (D-GA), introduced the Medicare Home Health Flexibility Act, making occupational therapy an initiating service in Medicare Home Health.

The American Occupational therapy Association (AOTA) continues to work towards passage of the Medicare Home Health Flexibility Act (H.R. 2468) to remove a long standing problem for the profession. [Visit AOTA's legislative action center](#) and **advocate today**.

### **AOTA Works Toward Passage of the AMSC Bill**

AOTA is working in Coalition with the American Physical Therapy Association (APTA), the American Academy of Physician Assistants (AAPA), and the American Dietetic Association (ADA) to pass Legislation to modify the appointment and grade of the Chief of the Army Medical Specialist Corps to the grade of brigadier general.

This legislation is critical to insure that the practitioners of the Army Medical Specialist Corps, who are so critical to the provision of high quality, effective care, have equal representation in decision making in the Army Medical Department as other health corps.

Senator Tim Johnson (D-SD) has introduced this legislation in the Senate and AOTA in concert with the other organization is working to secure introduction in the House of Representatives and to secure bi-partisan support in both chambers of Congress. Visit [AOTA's legislative action center](#) for additional information and to advocate in support of this important issue.

### **Frontline Health Care Providers**

Representative Bruce Braley (D-IA) has introduced the Access to Frontline Health Act (H.R.531) to establish and carry out a Frontline Providers Loan Repayment Program to provide loan repayments in exchange for a health professional, including occupational therapy practitioners, providing frontline care services for two years in a designated scarcity area.

This legislation will help address shortages of qualified occupational therapy practitioners as well as providing clients in shortage areas with access to necessary and critical services.

Visit [AOTA's Legislative Action Center](#) and urge your member of Congress to support this important legislation.

### **AOTA Supports Legislation Addressing Pediatric Acquired Brain Injury**

AOTA has drafted a letter in support of the National Pediatric Acquired Brain Injury Plan Act (HR 2600) introduced by Rep. Leonard Lance and enjoys the bi-partisan co-sponsorship of 104 members of Congress.

The National Pediatric Acquired Brain Injury Plan Act will help insure that children who have suffered a TBI have access to the full spectrum of treatment including occupational therapy to help an enable these children to achieve an optimal level of functional performance in their everyday life activities.

[Read AOTA's support letter.](#)

### **AOTA Supports the Reauthorization of the Traumatic Brain Injury (TBI) Act**

AOTA along with the Brain Injury Association of America, the National Association of State Head Injury Administrators, the National Disability Rights Network, and several other national professional associations has signed onto a letter of support of reauthorization of the Traumatic Brain Injury Act, which is set to expire in 2012.

This legislation assists states and other entities to continue development and expansion of the service delivery system to better meet the needs of individuals coping with a TBI.

The Centers for Disease Control and Prevention estimates that at least 3.17 million children and adults across the country are living with permanent disabilities as a result of a TBI. The TBI Act provides for a coordinated and balanced approach to the prevention, education and research surrounding TBI.

### **AOTA Supports the Lymphedema Diagnosis and Treatment Cost-Saving Act**

AOTA has been working closely with lymphedema treatment advocates and Congressman Larry Kissell's (D-NC) office to draft and introduce legislation that would improve Medicare coverage for lymphedema diagnosis and treatment. AOTA worked to remove proposed external certification and accreditation requirements for occupational therapy practitioners and physical therapy practitioners. AOTA is currently working in coalition with APTA and other lymphedema advocates including the Livestrong Foundation and the American Cancer Society to secure introduction in the Senate.

### **AOTA Opposed Legislation**

#### **Oppose the Athletic Trainers Access to Medicare Act**

The Athletic Trainers Equal Access to Medicare Act (H.R. 2785) was recently introduced in the House of Representatives by Representative Edolphus Towns (D-NY). The legislation would allow non-qualified athletic trainers to bill the Medicare program for therapy services "incident-to" the physician's professional services, thereby eroding the May 2005 Centers for Medicare and Medicaid Services (CMS) regulations that restrict the billing of therapy services under Medicare to those qualified to deliver physical therapy, occupational therapy, and speech language pathology services.

H.R. 2785 would allow the billing of services provided by athletic trainers to the physician fee schedule and would apply the therapy cap limitations to these services. AOTA strongly opposes this legislation and encourages members of Congress to do the same. There is currently no Senate companion bill to H. R. 2785.

Visit [AOTA's legislative action center](#) and urge your members of Congress to oppose this potentially harmful legislation.

## **Recent Hill Activity**

### **S 2125 — Medicare Orthotics and Prosthetics Improvement Act of 2012**

**Sponsor:** Wyden, Ron (D-Ore.)

**Official Title:** A bill to amend Title XVIII of the Social Security Act to modify the designation of accreditation organizations for orthotics and prosthetics, to apply accreditation and licensure requirements to suppliers of such devices and items for purposes of payment under the Medicare program and to modify the payment rules for such devices and items under such program to account for practitioner qualifications and complexity of care.

**AOTA Position:** AOTA is currently neutral on this legislation. The bill includes a specific exemption for occupational and physical therapists.

**AOTA Action:** AOTA will be actively monitoring this legislation.