



Washington Highlights February 2012

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 (H.R. 3630) 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.

AOTA Hosting Congressional Briefing Supporting the Occupational Therapy Mental Health Act

AOTA will be sponsoring a House congressional staff briefing on Monday March 19th at 11:00 AM in 121 Cannon House Office Building... The event will examine 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

Come hear a panel of experts discuss the role that this allied health profession plays in assisting patients/consumer reacquire critical life skills.

- 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 Muller, MOT, OTR/L., Baptist Memorial Hospital in Memphis, TN.

House Committee Recommends Repeal of the Independent Payment Advisory Board

The Energy and Commerce Committee conducted their full Committee Mark-Up on the Independent Payment Advisory Board (IPAB) repeal legislation (H.R. 452). After minimal discussion, the legislation was then reported favorably, as amended, by a voice vote. The bill awaits consideration in the Ways and Means Committee before it can proceed to the floor for consideration by the full House.

The IPAB created by the Affordable Care Act (PL 111-148) is a fifteen-member United States Government agency charged with identifying specific savings in Medicare without affecting coverage or quality. The new system grants IPAB the authority to make changes to the Medicare program with the Congress being given the power to overrule the agency's decisions.

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.

AOTA Board of Directors Makes the Voice of OT Heard on Capitol Hill

On Thursday February 23, 2012 members of AOTA's Board of Directors came to Capitol Hill to advocate in support of several issues critical to the profession including the Occupational Therapy Mental Health Act (HR 3762) and the Medicare Home Health Flexibility Act (HR 2468).

Throughout this successful day of advocacy the Board conducted over 20 hill visits with Congressional staff in both the House and Senate. Visit [AOTA's legislative action center](#) to support the efforts of AOTA's ongoing advocacy efforts.

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@ota.org for more information.

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 Meets with Representatives from the Bureau of Labor Statistics

On February 16, AOTA staff along with representatives from the Consortium of Citizens with disabilities met with representatives of the Bureau of Labor Statistics to discuss the BLS recent employee benefit survey and how it may relate to the Essential Health Benefits included in the Affordable Care Act.

This survey was completed in 2010 to provide comprehensive measures of compensation and cost trends, the incidence of benefits, and detailed benefit and coverage provisions. The survey

also focused on current coverage of specific benefits by private industry as well as State and Local Governments.

AOTA and CCD were concerned that the survey did sufficiently reflect the full spectrum of critical services offered by health insurers. At the end of the meeting representatives from BLS assured the group that they would be happy to work with CCD and other stakeholders on future surveys to insure all appropriate services including occupational therapy are included and captured.

AOTA Works to Secure Falls Funding

AOTA participated in a call with the Falls Free Advocacy coalition to discuss advocacy strategies around falls prevention funding for the upcoming year. AOTA will be actively working with this group to secure adequate funding levels in future federal budgets for falls prevention.

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, need to have equal representation in the 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 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.