



June Federal Legislative Update

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

Join your colleagues in Washington DC for AOTA's Annual Capitol Hill Day on September 24, 2012 to help make the voice of occupational therapy heard on Capitol Hill.

A record number of occupational therapists occupational therapy assistants and students of occupational therapy are expected to help storm the halls of Congress to advocate on issues critical to the profession.

We are looking to build on the success of last year's hill day which saw over 400 participant's storm the Capitol to advocate with members of Congress.

Visit [AOTA's legislative action center](#) for more information on hill day and how to participate.

Supreme Court

On June 28, 2012: In a 5-4 decision released, the U.S. Supreme Court upheld the minimum coverage provision—more widely known as the “individual mandate”—that is the centerpiece of the Patient Protection and Affordable Care Act (ACA). Chief Justice John G. Roberts, Jr. wrote the majority opinion in *Nat'l Fed. of Ind. Businesses v. Sebelius*, U.S., No. 11-393 (6/28/12) with Justices Ruth Bader Ginsburg, Stephen G. Breyer, Sonia M. Sotomayor, and Elena Kagan joining in part. Justices Anthony M. Kennedy, Antonin Scalia, Clarence Thomas, and Samuel A. Alito Jr. dissented.

Four legal issues were before the Supreme Court: (1) the applicability of the Anti-Injunction Act (AIA), which could lead the Court to rule that a decision is premature since no penalties related to the individual mandate have yet been imposed; (2) the constitutionality of the individual mandate itself; (3) the severability of the individual mandate and whether the entire act must be invalidated if the mandate falls; and (4) whether the Medicaid expansion provisions are unlawfully coercive.

[Click here](#) for more information on the Court's decision.

Newly Elected AOTA Board Members Lobby Congress

On June 14, AOTA President Dr. Florence Clark and newly elected AOTA Board members Amy Lamb, Pam Toto and Shaun Phipps joined Policy staff on Capitol Hill to advocate for several key issues critical to the profession.

During several meetings with key members of both the House and Senate AOTA representatives were able to advocate for passage of the Occupational Therapy Mental Health Act (HR 3762), the Medicare Home Health Flexibility Act (HR 2468), legislation to elevate the status of occupational therapy in Army, as well as finding long term solutions for the Medicare Part B therapy caps and the “doc fix” prior to implementation in January.

Visit [AOTA's legislative action center](#) to help advocate and to learn more about these critical issues.

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.

AOTA has been successful in securing support of the Mental Health Liaison Group (MHLG) a leading national coalition focused on mental health issues. Over 34 members of the group have signed onto a letter supporting the HR 3762 which will be circulated on Capitol Hill.

Securing the support of the broader mental health community is a significant step in AOTA's efforts to advance 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

Representatives Charles Boustany (R-LA) and John Lewis (D-GA), have introduced the Medicare Home Health Flexibility Act, allowing an occupational therapist to perform the initial and comprehensive assessment in Medicare Home Health pursuant to a physician's order.

AOTA staff is working aggressively to secure strong bipartisan support for this legislation, specifically focused on the two committees of jurisdiction in the House of Representatives (Energy and Commerce and Ways and Means). Over the past weeks AOTA has met with several key members of both committees to build momentum towards possible inclusion in an end of the year Medicare package.

This has been an issue for over 30 years and needs to be addressed to insure that beneficiaries have access to the most appropriate skilled therapy service in the timeliest and appropriate manner possible.

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.

Bundling/Episodic Payments

On June 19, 2012, Chris Metzler and Jennifer Hitchon travelled to Baltimore to meet with Valinda Rutledge, Director of the Patient Care Models Group at CMS's Center for Medicare and Medicaid Innovation, and her colleagues Lori Anderson and Elyse Pegler. They discussed bundling/episodic payment and the contributions occupational therapy can make in coordinated, integrated, patient-centered care systems.

Administration on Community Living

Representatives from AOTA's Policy and Practice divisions had the opportunity to meet with Henry Claypool, Principal Deputy Administrator Administration for Community Living. The meeting was focused on the critical role of occupational therapy in working with beneficiaries to continue to live healthy and productive lives while remaining in their home and communities.

Mr. Claypool was very receptive and urged AOTA to continue to work with his office to develop and implement policies and practices that will achieve the goals of the administration to allow individuals to remain in their homes and communities.

The Administration for Community Living (ACL) was created on April 16 of this year, with the stated focus of bringing together key HHS organizations and offices dedicated to improving the lives of those with functional needs into one coordinated, focused and stronger entity.

The ACL will merge the Administration on Aging, the Office on Disability and the Administration on Developmental Disabilities into a single entity that supports initiatives and efforts focused on the unique needs of individuals and groups. This new agency will work on

increasing access to community supports and achieving full community participation for people with disabilities and seniors.

The Administration will seek to enhance and improve the broad range of supports that individuals may need to realize full functional participation as members of their respective communities. To achieve these stated goals the administration will need to look beyond the scope of traditional health care delivery to include the full panoply of appropriate services including occupational therapy critical to achieving optimal outcomes.

Misericordia OTD Students Come to Capitol Hill

Students from Misericordia University's Doctorate in Occupational Therapy (OTD) program came to Washington DC to advocate with their members of Congress on several issues critical to the profession. AOTA Federal affairs staff provided a briefing prior to their meetings to answer questions and to provide an update on current legislative priorities.

The students were able to meet with key members of the House of Representatives and Senate to advocate for the profession and to help make the voice of occupational therapy heard on Capitol Hill.

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.

AOTA Supported Legislation

AOTA Working Towards 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 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.