

June 15, 2010

Therese M. Vaughan, Ph.D.
Chief Executive Officer
National Association of Insurance Commissioners
Executive Office
444 North Capitol Street NW, Suite 701
Washington, DC 20001

Re: Request to Correct the Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act

Dear Dr. Vaughan:

The American Occupational Therapy Association (AOTA) is writing to request that the National Association of Insurance Commissioners (NAIC) make a technical correction to the Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (hereafter, “Model Regulation”)¹ and add “occupational therapy” to the itemized lists of Medicare-covered services found in Plans A, B, C, D, F, G, K, L, M, and N of the regulation.

AOTA is the national professional association representing the interests of more than 140,000 occupational therapists, assistants, and students. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by helping to promote health and prevent – or minimize the functional effects of – illness, injury, and disability. Federal law² and Medicare Manual guidance³ specify that outpatient occupational therapy services are a covered benefit under Medicare. The Model Regulation, however, does not make this clear, and instead identifies “physical and speech therapy” by name as covered services and omits any mention of occupational therapy.⁴ AOTA asks that the NAIC review and revise the Model Regulation to state “physical, occupational and speech therapy” throughout.

The Social Security Act clearly states that outpatient occupational therapy, along with physical and speech therapy, is a Medicare-covered benefit:

The benefits provided to an individual by the insurance program established by this part shall consist of [...] entitlement to have payment made on his behalf (subject to the provisions of this part) for [...] outpatient physical therapy

¹ Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (revised October 2, 2008), *available* http://www.naic.org/documents/committees_b_senior_issues_medigap_unoff_revised_model.pdf.

² Social Security Act § 1832(a)(2)(C); 42 U.S.C. § 1395k(a)(2)(C).

³ Medicare Benefit Policy Manual, Pub. 100-02, Ch. 15, §§ 220, 230.

⁴ Model Regulation, Plans A, B, C, D, F, G, K, L, M, and N.

services..., outpatient occupational therapy services ..., and outpatient speech-language pathology services....⁵

The Social Security Act further defines “outpatient occupational therapy services” as follows:

The term “outpatient occupational therapy services” has the meaning given the term “outpatient physical therapy services” in subsection (p), except that “occupational” shall be substituted for “physical” each place it appears therein.⁶

Thus, although occupational therapy is not always specifically named throughout law, it is included *by definition* as a separate and distinct covered service wherever physical therapy is mentioned. This iteration of the Model Regulation does not explicitly list occupational therapy or explain its absence, creating an incomplete and misleading account of therapy services reimbursed under Medicare Part B.

AOTA believes that health care providers and consumers should have access to clear and complete information about covered benefits, and we therefore respectfully request that the NAIC revise its Model Regulation and list “occupational therapy” by name along with physical and speech therapy in the document’s charts for Plans A, B, C, D, F, G, K, L, M, and N. For example, in Plan A we request the following addition:

**PLAN A
 MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR**

* Once you have been billed \$[135] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES— IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician’s services, inpatient and outpatient medical and surgical services and supplies, physical, <u>occupational</u> and speech therapy, diagnostic tests, durable medical equipment, First \$[135] of Medicare Approved Amounts*	\$0 Generally 80%	0% Generally 20%	\$[135] (Part B deductible) \$0

⁵ Social Security Act § 1832(a)(2)(C); 42 U.S.C. § 1395k(a)(2)(C) (emphasis added).

⁶ Social Security Act § 1861(g); 42 U.S.C. § 1395x(g).

Remainder of Medicare Approved Amounts			
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Underlined text = proposed new text.

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AOTA is committed to working with the NAIC to facilitate the reimbursement of covered therapy services. Should you have any questions, or if you would like additional information, please contact us at (301) 652-6611 ext. 2023 or jhitchon@aota.org.

Sincerely,



Jennifer Hitchon
AOTA Regulatory Counsel

cc: Jane Sung, Senior Health Policy Analyst and Counsel, NAIC, jsung@naic.org
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