



## Separate Legislative and Regulatory Category for Orthotic and Prosthetic Devices

**Background:** While Congress enacted the Medicare program (Title XVIII of the Social Security Act) in 1965, the measure provided for reimbursement of “other health services and supplies” as covered by Part B services. This catchall phrase was the first determination of how the field of orthotics and prosthetics (O&P) was to be reimbursed under the new Medicare legislation. Subsequent perceived problems with the reimbursement of O&P services under Medicare prompted the development and adoption of the first organized coding system for O&P devices in the late 1970s. This new system was specifically designed to address inconsistent coverage decisions and to facilitate a more efficient and accurate Medicare reimbursement of O&P health care services.

The 1965 Medicare legislation also provided for the reimbursement of medical equipment such as wheelchairs, canes, walkers, etc., under a similar mechanism. These items, which are commonly referred to as “durable medical equipment” (DME), for the most part are off-the-shelf items and can be rented to or used by more than one beneficiary.

When Congress passed section 4062 of Public Law 100-203 (OBRA 1987), better known as the “Six-Point Plan,” it effectively melded the reimbursement of O&P and DME. The O&P field did not write, seek or endorse the “Six-Point Plan,” a measure introduced at the behest of the DME industry, and maintains that it has been inappropriately lumped together with a group of providers who do not comprise an allied health discipline, but merely sell or rent products to support certain treatment modalities. This situation was exacerbated by the many difficulties experienced by the O&P field, by the Centers for Medicare and Medicaid Services (CMS), and by the various carriers during the implementation of the “Six-Point Plan,” because the system was not designed to address the inherent differences between O&P and DME.

The wide differences between O&P and DME were finally recognized by Congress in the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990). Section 4153(a)(1) provides for the creation of a separate statutory section, 42 USC Section 1395m(h), that pertains only to O&P and moves the O&P reimbursement provision out of the section that addresses DME. This statutory

separation allows Congress to consider O&P in its own right and underlines the impropriety of treating and evaluating O&P and DME in the same manner.

**Problem:** Despite the fact that a legislative separation of O&P and DME has been secured, confusion over the differences between these two disciplines continues to exist within Congress and the federal agencies. This confusion has caused policymakers in Congress to inadvertently consider action that dramatically affects the orthotic and prosthetic industry and profession due to discrepancies in how O&P is defined. While “orthotics” and “prosthetics” has been broadly defined by Congress to include a number of items not typically used in an O&P practice or items considered to be DME by the O&P field, “orthotics” is strictly defined by the O&P field as “orthoses or braces” and “prosthetics” is strictly defined as “artificial limbs.”

Federal regulatory agencies, primarily CMS and the Department of Veterans Affairs (DVA), also continue to confuse O&P and DME and have failed to promulgate appropriate regulations reflecting the differences between these two disciplines as recognized by OBRA 1990.

**Solution:** Because legislation continues to lump DME and O&P together, we believe there could potentially be inappropriate implications for the O&P field. The American Orthotic and Prosthetic Association therefore requests that any references to “orthotics and prosthetics” be deleted from provisions that deal specifically with DME and that O&P be treated and evaluated separately.