



**OHIO PODIATRIC  
MEDICAL  
ASSOCIATION**

# Journal

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## President's Message

# My Two Dollars Worth

by Thomas W. Kunkel, DPM



2010 OPMA  
President

**MY TWO DOLLARS WORTH...**The old sign, reproduced below, hangs in one of my treatment rooms. My patients get a kick out of it, particularly considering our current health care environment. Maybe a

patient will offer me the two dollars for my services. Of course, I'm quick to point out that it says 'minimum fee.' Or they'll ask, "Hey Doc, what's a Pedic Society?" and the conversation typically goes south.

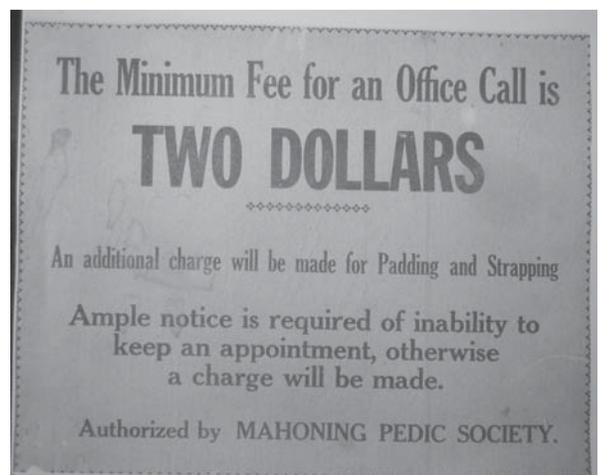
This yellowing document from a bygone time in podiatric medicine stimulates some interesting conversations: the cost of health care, health insurance or the lack of it, the specialization of medicine, the financial problems of a nearby hospital, and of course, health care reform and the ongoing nationwide debate.

When I started practicing in 1987, I joined a podiatrist that had been at it since 1944. My predecessor started as Irvin S. Knight DSC (Doctor of Surgical Chiropody) and retired as Irvin S. Knight DPM. He, for his part, assumed the practice from Harlow C. Stahl, DSC, who, as far as I can tell, given the text books I've inherited, was

educated during the war – that is WW I.

Now, I like to think I'm fairly progressive in my profession, yet I can't help but feel the historical tug of these earlier professionals' efforts on podiatry's behalf, as well as the singular skills and unique training that set them apart and allowed podiatric medicine to evolve to what it is today.

Dr. Knight had polio as a youth so he required a cane and wore a double upright metal AFO that was bolted to his shoe and was strapped to his leg with thick leather straps. He had great hands though and routinely relieved his patients' foot pain while masking his own discomfort with an overtly upbeat and compassionate disposition. He was among the first podiatrists in my community of Youngstown to have hospital privileges. He was a capable surgeon but took great pride in being able to treat that patient conservatively.



More than anyone, he impressed upon me the deep trust a patient must have to allow me to put a surgical scalpel to their skin without the benefit of anesthesia or sedation. Dr. Knight, after wielding  
*(Continued on page 2.)*

## President's Message

(Continued from page 1.)

that scalpel, could dress a deformed and arthritic foot with felt padding, gauze and tape so as to instantaneously negate profound misery.

Imagine the conversation that Dr. Stahl (a 1930 manifestation), Dr. Knight (1960), Dr. Kunkel (1990) and today's student that will be practicing in 2020, would have. They could learn a lot from each other and I believe the knowledge would flow freely back and forth, from experience to youth, from youth to experience.

Medicine, in general, has made incredible advances in the last century. Yet, even further back when a medical doctor bled a patient to release the "bad humors," he was accepted as a pillar of the community.

Podiatric medicine has had to take a decidedly different path to acceptance as an indispensable part of today's health care delivery system. Our profession has flourished primarily because it fulfills the requirements of a patient population in need.

That was true in both Dr. Stahl's and Dr. Knight's time as well. Though lagging behind, the larger medical community, third parties and regulating agencies (for the most part) accept that our role is vital to public health. They have come to recognize that podiatric medicine delivers to their patients and policyholders capable and cost effective care.

Our progress has been re-

markable and I'm sure Drs. Knight and Stahl would marvel at "chiroprody" today. Still, we currently encounter certain roadblocks and know all-to-well there are inroads to be made as a profession. Then, as now, podiatry needs an engaged and proactive professional organization to advocate for its interests.

Right now, the OPMA is working to further solidify podiatry's place in today's health care framework.

**DUE TO ONGOING LARGE BUDGET SHORTFALLS**, the State of Ohio is still considering dropping Supplemental Services in Medicaid. The tobacco settlement funds gave podiatrists a reprieve until the end of June. We must continue to intervene with the State Legislature for our patients' access to vital podiatric services. (Here's where I must ask that you contribute to the OPMA PAC.)

**THE LAWSUIT AGAINST THE OHIO DEPARTMENT OF INSURANCE** lumbers on. Recall that fee parity is on the line. Third parties are obligated to pay us the same fee they pay another physician for the same service. The ODI must uphold the existing statutes that clearly spell this out. (Here's where I must ask you to contribute to the OPMA Legal Fund.)

**ON APRIL 23RD** the OPMA is putting on a timely Coding Seminar that will cover a range of practice management and socioeconomic issues. This meeting will bring in representatives from Medicare and Medicaid, as well national authori-

ties on correct coding that will prove invaluable in your practice.

**THE REGION IV CME SEMINAR** put on by the OPMA is scheduled for June 3-5 at the Columbus Hilton in the Easton complex. The program, the venue, and the atmosphere make the quality of this CME event unsurpassed in this part of the country. Come and see what I mean. (PICA will be offering a 15% discount on their annual premium with your attendance at the Region IV CME Seminar).

**THE OHIO DELEGATION** to the APMA House of Delegates is gearing up for their trip to Washington DC (as I write this). Title XIX continues to loom large in our profession's 'to-do' list. The OPMA is taking Resolution 1, from our own HOD, to DC so as to put Title XIX on APMA's 'done' list.

That is but a slice of the action at the OPMA this spring. New challenges and opportunities arise every day. As you work with your own day-to-day issues, the OPMA is diligently making your job easier. Your Association is working to make sure nothing gets between you and the quality care you afford your patients.

In one of Dr. Stahl's old textbooks I alluded to, [*"The Human Foot: Anatomy, Deformities and Treatment"* by Dr. William M. Scholl. Second Edition, Copyright 1916] Harlow C. Stahl scribbled some notes in pencil. Among them he wrote: "Belong to your Society...Your life work, make something of it." Some things never

change.

As you pay your membership dues and if you contribute to our PAC and legal fund you can't help but wonder, "When will this end?" Frankly, it ends when you stop caring about this profession and the service we provide our patients. For some, that level of caring has not even begun.

Membership in The OPMA isn't mandatory of course and, as such, about 1 in 3 podiatrists in Ohio are still not members. There are as many excuses as there are non-members. (Full disclosure: the author was not an OPMA member for about 4 years. Ouch!) Our ability to get things done depends primarily on membership, not leadership. The latter is the spawn of the former. So, I ask all of you to be recruiters for the OPMA.

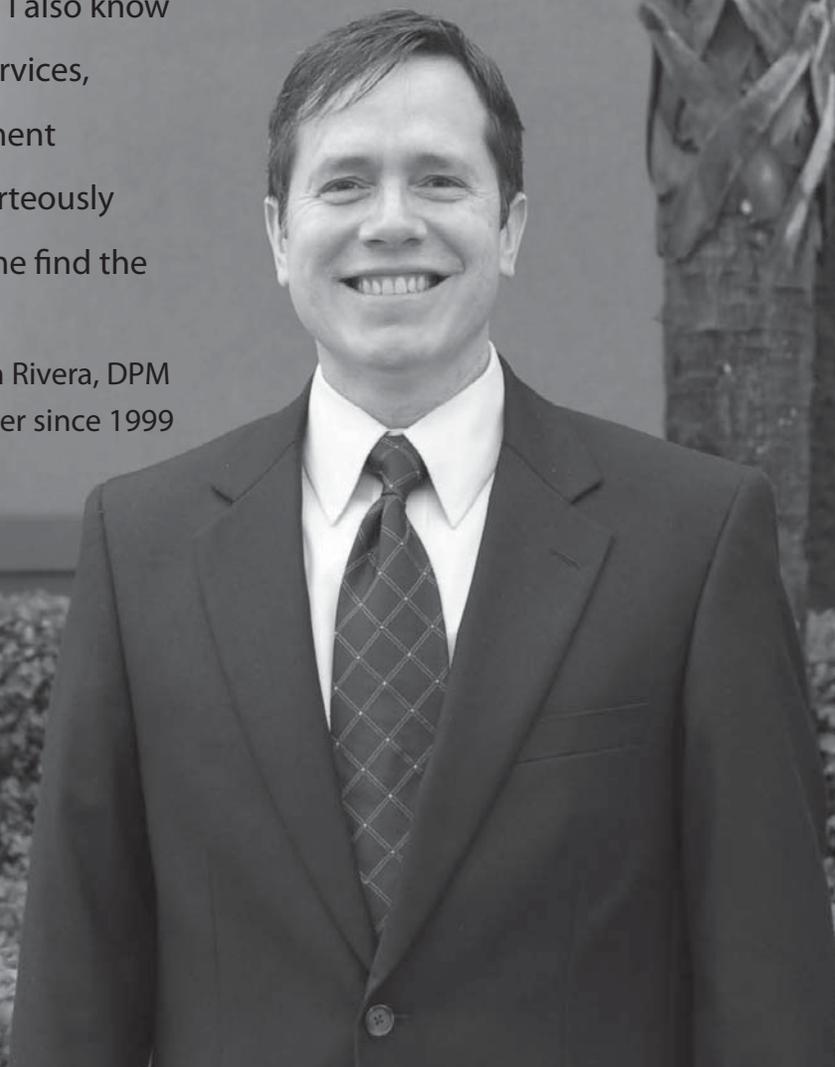
Each generation of practitioners has had its challenges. Even with the phenomenal progress of podiatric medicine since the days of "The Mahoning Pedic Society," the OPMA will not sit idly by while a third party comes between you and your patient, "your life work".

I'll close with The OPMA Mission Statement. "*The Ohio Podiatric Medical Association will act as a single voice for podiatric physicians in Ohio to ensure the highest quality of medical and surgical foot & ankle care through advocacy, education, and public awareness*".

That's my two dollars worth.

"As a policyholder, I feel secure knowing that PICA offers me the malpractice coverage I need to be protected. I also know that I can rely on PICA's Policy Services, Underwriting and Risk Management Departments to quickly and courteously answer my questions and help me find the information I need."

—Juan Rivera, DPM  
Policyholder since 1999



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## From The Desk of the Executive Director **Being Bullish on Podiatry**

by Jimelle Rumberg, PhD,  
CAE



The times, they are a changing! With change there is always uncertainty,

so be consoled that you have a ready resource on the OPMA Web site. ([www.opma.org](http://www.opma.org)) Please check the APMA Web site and Palmetto GBA Web site frequently, as deadlines are constantly changing. We hear and understand your frustration, so check these sites routinely, where many of your answers are posted.

After a stimulating day on Capitol Hill in Washington in late-March, I have come to the realization that podiatric services are and will be increasing with the numerous avenues of health care systems. Over the next three decades in particular, geriatric consumers of services will increase before leveling out, and the public health focus of walking, obesity management and holistic health will spotlight foot health, foot pathology, and biomechanics with increasing interest. With growing emphasis on foot care and health, it's more important than ever for physicians to be bullish on podiatry.

A preliminary result of a potential landmark study, commissioned by APMA, was reported at the APMA House of Delegates. This soon-to-be published study was performed by one of the most respected independent think tanks in our country. It hopefully will prove that when DPMs provide foot and ankle care (rather than MDs or DOs), insurance companies will save tens of millions of dollars each year. This powerful information will be used by APMA to influence the insurance industry and Congress in a very positive way. We expect the results of the study to be published within the next few months in *Diabetes Care*, *JAPMA* and numerous legal, legislative and insurance industry publications. Reliable, independent, podiatric-focused quantitative data is long over-due. It can address many cost savings to rebut the Congressional budget offices' analysis on the cost of Title XIX inclusion to the health care continuum in America and validate the cost savings that quality podiatric services can provide.

On the home front of OH, our legislative issues continue to be included in all physician bills. Our legal matters with the ODI are scheduled for May 13 at 9:30 by Magistrate Thompson regarding the contra motions to compel the ODI to surrender all items requested during discovery. They are challenging OPMA, so a contra motion was filed immediately. The process continues as well

as our requests to continue with your contributions to the OPMA Legal Fund. Educationally, we look forward to over 100 members and assistants at our APMA Coding Seminar on April 23. Lunch will be provided by Dermagraft. Dr. Paul Kinberg, the Chair of the APMA Coding Committee will be the featured speaker along with OPMA's Dr. Paul Lieberman, Palmetto GBA's Vanessa Williams and ODJFS' Ombudsman Jamie Speaks. We've covered all bases for you with coding, so we trust that you'll take advantage of this 5 CME opportunity at the Airport Marriott Hotel in Columbus on Friday, April 23.

One last reminder: the early bird registration for Region IV concludes on April 15 with regular registration continuing up until one week before the event on May 27. After May 27, you must register on-site with an additional fee, so please register early. If you attend the PICA lecture, you will receive a 15% discount on your premium renewal. That substantial discount almost pays for one full year of APMA/OPMA dues, so attend for the most cost savings as a member, compliments of PICA. (10% discount for the lecture and an additional 5% if you're an OPMA member for a total of 15%). We hope to see you there!

And in closing, I would be remiss if I did not recognize the superior efforts of your APMA Delegation from OH, who professionally poised themselves with a

resolution addressing podiatry's inclusion in Title XIX. The Delegation was chaired by Dr. Paul Lieberman, with Drs. Bruce Blank, Angelo Petrolla, Mark Gould, Kevin Schroeder, Bruce Saferin, and alternates Drs. Howard Waxman and Thom Kunkel. The Resolution, co-sponsored by California, did not pass; however, 33% of the APMA HOD sent a clear message on the passage of Title XIX in past attempts. When you see these members, please thank them for their time and passion for podiatry. They each did a stellar job and represented you professionally.

## Dues Invoices in the Mail!

Have you received your membership dues invoices for the 2010-2011 fiscal year? All members are encouraged to send checks to help reduce our bank fees.

Membership dues for the entire fiscal year are shown, with half due by May 1; quarterly and monthly dues options are available. Let us know if you will be paying other than semi-annually.

Join us as OPMA monitors changes to Medicare and Medicaid and as we progress in our lawsuit against the Ohio Department of Insurance. PAC is always working for podiatry. We depend on members' financial support for the many activities that defend the scope of practice of member physicians and to offer quality education and training to advance the profession.

# Members' Corner

## Meet Our Newest Industry Affiliate Sponsor

The Ohio Podiatric Medical Association is pleased to announce our newest *Industry Affiliate Sponsor*, **United Agencies Insurance Group**. United Agencies Insurance Group can provide OPMA members discounts on Personal and Commercial insurance products such as Auto, Homeowners and Business-Package Insurance through The Auto-Owners Insurance Company. A member specific web site has been established at [www.podiatryplus-ohio.com](http://www.podiatryplus-ohio.com). Specifics

for OPMA members can be addressed by James J. McMahon, Chief Operating Officer at 216.861.3211.

Headquartered in downtown Cleveland, Auto-Owners Insurance Company is an A++ A.M. Best rated insurance carrier writing over \$4.4 billion in annual premiums. Operating in 26 states, Auto-Owners is one of the 20 largest property/casualty organizations in the U.S. United Agencies chose Auto-Owners as the lead carrier for this program for its claim-settlement integrity.

## You Are Today's Podiatrist

During APMA's 90th Annual House of Delegates

meeting in Washington, a greatly needed campaign was unveiled to members — **Today's Podiatrist**.

*Today's Podiatrist* is an educational campaign focused on who we are and what we do as doctors of podiatric medicine, targeting APMA membership, medical colleagues, patients, and the general public. OPMA members will play an integral role in the campaign's success and in educating and re-educating in some cases, our communities about our profession and our wide range of capabilities.

In the April edition of *APMA News* you will see an article by newly inducted APMA President Dr. Kathleen Stone, and receive a CD

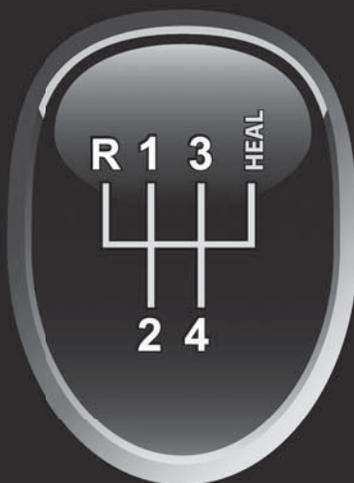
containing an electronic campaign toolkit.

The CD includes an interactive "How-To" guide that automatically plays when you insert it into your computer. It walks you through the toolkit materials and offers template letters for your immediate use to market your practice to patients and other medical providers.

As you know, OPMA is working to promote, protect, and advance the practice of podiatric medicine in our state and this campaign will only strengthen our efforts. More information and materials will be coming soon from the APMA PR department—so stay tuned, and remember—**You are Today's Podiatrist**.

## Make the Shift.

Get your diabetic foot ulcer patients back into high gear.



Any wound that remains unhealed after 4 weeks is cause for concern, as it is associated with worse outcomes, including amputations.

Make the shift to Dermagraft for faster healing times with clinically proven results. **Dermagraft: Delivering living cell therapy.**



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## UPDATE FROM THE STATEHOUSE

# 2010 in the Ohio Legislature

The 128th General Assembly, the current two-year session of the Ohio General Assembly, has been characterized by many as an assembly of stalemates. The upcoming elections and divided government resulted in a limited number of new laws.

The state budget in 2009 created a number of different standoffs during discussions to fill budget deficits. Additionally, lawmakers passed just 17 bills in 2009 and ten in 2010. Eight of those were budgets that the Ohio Constitution required to be passed.

In 2007, the first year of the previous General Assembly, 45 bills passed both chambers, while 64 bills passed in 2005. Some may argue, however, that this limited action in government is not a bad thing!

The Legislature is scheduled to hold committee hearings and voting sessions through the end of the May. However, many Statehouse insiders predict that legislators may wrap up their work early for summer recess and local district campaigning.

## Update on Legislation of Interest



*The Ohio Senate Chamber*

### **HB 81 (BOYD/GARDNER) — DIABETES COVERAGE BILL**

House Bill 81 legislation that requires insurance companies to provide benefits for equipment, supplies and medication for the diagnosis, treatment and management of diabetes, continues to be stalled in the Ohio Senate. The bill passed the Ohio House in December 2009. Senate Leadership has reported to the bill's proponents that they do not intend to move any insurance mandate bills in the near future.

### **HB 185 (BOOK/DEGEETER) — PROHIBITING UNILATERAL CONTRACT CHANGES**

Hearings continue on HB 185, legislation sponsored by Reps. Todd Book and Tim DeGeeter to clarify that any changes to a contract between a health insurance company and a provider be signed off by both parties. As the insurance lobby has stepped

up their opposition, it has become clearer that the bill will be a hard sell in the Ohio Senate. HB 185 had opponent testimony on February 9.

### **HB 122 (BOYD)/SB 98 (PATTON) – PHYSICIAN DESIGNATION BILL**

The Academy of Medicine of Cleveland and Northern Ohio and the Ohio State Medical Association are working to advance this legislation that would establish standards for physician rating systems established by health insurance companies. The bill would prohibit such systems from being based solely on cost measures. The OPMA was successful in convincing the bill's sponsors and its chief proponents to amend the proposal to include the definition of "podiatric physician" in the list of covered providers. HB 122 and SB 98 are being heard in the Senate Insurance Committee.

### **SB 86 (BUEHRER) – EXPANDED QUALIFIED IMMUNITY FOR ED DOCS**

Legislation to expand qualified immunity for physicians working in emergency departments and those who provide disaster relief services is gaining momentum with a compromise to change the legal standard for physicians in emergency rooms to a slightly lesser standard of "reckless disregard." Chairman Bill Seitz of the Senate Judiciary – Civil Justice Committee said that the change was needed since care in EDs is a combination of both compensated and uncompensated care. Without this change, the bill likely would have died in committee.

The OPMA was also successful in convincing the sponsor and committee chair of this bill to include podiatrists in the definition of eligible providers. The committee is expected to vote on the bill in upcoming weeks.

## NEWS FOR YOU

# Important Changes from CMS

## CMS Delays Phase 2 Change Requests

James Bossenmeyer, director of the Centers for Medicare & Medicaid Services (CMS), Division of Provider/Supplier Enrollment, has announced that CMS will delay the implementation of Phase 2 of Change Requests (CR) 6417 and CR 6421 from April 5, 2010, until January 3, 2011.

Under these CRs, CMS will not pay claims for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) from another provider or supplier unless the referring and ordering physician is in PECOS, or in the Medicare carrier's "master provider file." In 2009, CMS adopted a new procedure for checking the Medicare enrollment status of physicians ordering DMEPOS. This procedure relies heavily on Medicare's relatively new PECOS, a central repository of physician enrollment data, which is causing problems because not all Medicare-enrolled physicians are listed in PECOS.

The delay in implementing Phase 2 will give physicians and non-physician practitioners who order items or services for Medicare beneficiaries or who refer Medicare beneficiaries to other Medicare providers or suppliers, additional time

to enroll in Medicare or take necessary action to establish a current enrollment record in Medicare prior to Phase 2 implementation.

Podiatrists who order or refer DMEPOS can confirm their enrollment in PECOS by accessing Internet-based PECOS at <https://pecos.cms.hhs.gov/pecos/login.do> on the CMS Web site, or by calling Palmetto's Provider Relations Department at 1-866-332-7025.

| Source: APMA eNews No. 3,001 |

## CMS Announces New HCPCS Modifier

Effective April 1, 2010, the Centers for Medicare and Medicaid Services (CMS) has revised instructions as well as implemented changes for providers using advance beneficiary notices (ABNs). Prior to April 1, providers could, if they wished, issue patients notices (e.g., Notice of Exclusion from Medicare Benefits, or one that they developed themselves) that the services contemplated or items to be dispensed were either excluded from Medicare coverage by statute, or for which no Medicare benefit existed.

With the new instructions, CMS announced that two HCPCS modifiers have been updated or introduced to allow for the voluntary use of ABN as opposed to required ABN uses: The "GA" modifier has been redefined as "Waiver of Liability Statement Issued as Required by Payer Policy" (the old definition was "Waiver of Liability Statement on

File"). The "GA" modifier should be used to report when a required ABN was issued for a service or item. The "GA" modifier should not be reported with any other liability-related modifier (e.g., "GY"). When a code with an appended "GA" modifier is denied reimbursement, Medicare will assign beneficiary liability on the EOB (i.e., Medicare will state on the explanation of benefits that the patient is responsible for payment).

APMA Analysis: Not much changes. The "GA" modifier is generally used on a service or item that the provider determines would normally be reimbursed, but will be denied reimbursement in this particular instance for a variety of reasons (e.g., not medically necessary, or falls outside a specific payment guideline such as those found in LCDs or NCDs). Under qualified routine foot care, one example is of a repeat performance of a service within 60 days of the previously-billed palliative service. In these cases, the claim must be filed with the Medicare carrier, and the "GA" modifier flags the service or item for Medicare assignment payment liability—most likely to the patient. If no "GA" modifier is appended by the provider in cases where it should be, the EOB will return with no payment and no patient responsibility to pay—a negative outcome for any podiatrist.

The "GX" modifier is new. It is defined as "Notice of Liability Issued, Volun-

tary Under Payer Policy." The "GX" modifier should be used to report when a voluntary ABN was issued for a service or item. The "GX" modifier should not be used on covered services or items. The "GX" modifier can be appended to the same service or item code that a "GY" modifier ("Item or Service Statutorily Excluded or Does Not Meet the Definition of any Medicare Benefit"). If a "GX" modifier is reported on the same code as a "GA," "GZ," "EY," or "GL," the claim will be returned to you. When a code is appended with a "GX" modifier, Medicare will automatically deny the service or item, and the EOB will reflect a beneficiary liability to the claim (i.e., the patient is responsible for the provider's charges).

APMA Analysis: If you generally do not provide your patients with an ABN notice (which is voluntary) in the case of statutorily non-covered services or items, but instead, let them know the service or item will not be paid by Medicare because it is not a benefit, then you may not have any issues with the "GX" modifier. If, however, you do notify your patients in writing (generally through the ABN) that they will be responsible for payment of non-covered benefits, you will likely need to append a "GX" modifier next to the "GY" modifier. CMS has not addressed how they might have avoided this issue by redefining the "GA" modifier.

| Source: APMA eNews No. 3,029 |

# Report of The 2010 APMA HOD

**APMA HOUSE OF DELEGATES** met on March 21 - 22, 2010 in Washington, DC, at the JW Marriott Hotel. Members of the OPMA Delegation included:

## *Delegates*

Dr. Bruce Saferin  
Dr. Angelo Petrolla  
Dr. Mark Gould  
Dr. Kevin Schroeder  
Dr. Bruce Blank  
Dr. Paul Lieberman

## *Alternate Delegates*

Dr. Thomas Kunkel  
Dr. Howard Waxman

The OPMA resolution “Definition of Physician that Includes Podiatrists in all Federal Legislation” did not pass the APMA House of Delegates. The APMA presented a White Paper on the APMA’s progress in getting *Podiatrists* listed as Physicians in Title 19. The House was informed of two new Consultants they had consulted with recently and were told to continue on the same course. The APMA leadership convinced the majority of the APMA HOD there was no need to hire additional Consultants at this time.

## **Dr. Paul Lieberman**

*Chairman*

*OPMA Delegation*

THE OHIO DELEGATION TO  
THE APMA HOD



*The OPMA Delegation to APMA HOD (left to right): Drs. Thom Kunkel, Mark Gould Howard Waxman, Paul Lieberman Bruce Saferin, Bruce Blank, Jimelle Rumberg, Angelo Petrolla, and Kevin Schroeder.*



*Student Doctors from Ohio, Mark Razzante and Christina Pratt, with Drs. Schroeder and Kunkel and Congressman Jim Jordan.*



*Drs. Kunkel and Rumberg with John Billington, JD, MPH, a Legislative Fellow at Senator Sherrod Brown’s office.*



*Christina Pratt, Dr. Thom Kunkel, Legislative Correspondent for Senator Voinovich, Angela Mikolajewski, and Dr. Rumberg.*



*Drs. Kunkel and Rumberg were on the Hill the day the historic Health Care Reform Bill was signed into law.*



*Congresswoman Marcy Kaptur and Dr. Rumberg, who attended a Kaptur reception on behalf of APMA PAC. Dr. Jerry Ferritto attended a similar event for Congresswoman Betty Sutton.*

## **Election Results at 90th APMA HOD**

Elections for the APMA Board of Trustees (BOT) and other offices were held Monday afternoon at the APMA House of Delegates (HOD). The results are as follows: Kathleen M. Stone, DPM, President; Michael J. King, DPM, President-elect; Joseph M. Caporusso, DPM, Vice President; Matthew G. Garoufalis, DPM, Treasurer.

Three-year term on BOT: Frank A. Spinosa, DPM; Ira Kraus, DPM; David G. Edwards, DPM. One-year term on BOT: Jeffrey R. DeSantis, DPM; Speaker of the 2011 HOD: Mark M. Schilansky, DPM.

Jeffrey M. Robbins, DPM, was re-elected to a two-year term on the Joint Committee on the Recognition of Specialty Boards (JCRSB). Kim Hite was confirmed as the health care community representative to the JCRSB.

## **APMA Committee Appointments**

Bruce G. Blank, DPM, Health Systems Committee; Elizabeth Hewitt, DPM, Young Member's Committee and State Advocacy Liaison; David Hintz, DPM, MPH – Advisor, Public Health and Preventive Podiatric Medicine Committee; Carly Robbins, DPM – Young Members - Vision 2015 Committee; Jimelle Rumberg, Ph.D., CAE – ASPE Advisor, Membership and Student Liaison Committee.



*Dr. Rumberg briefed Congressman Zack Space regarding Title XIX and thanked him for his continued support of podiatric issues.*

## **OPMA Goes to Congress**

OPMA happened to go to Congress on the very day of the signing of the historic health care reform legislation, Tuesday, March 23, 2010. Those representing OPMA were Drs. Ferritto, Kunkel, Blank, Schroeder, and Rumberg. Joining them were two Student Doctors Mark Razzante and Christina Pratt, both attending school in California.

Congress offices visited were: Austria, Boehner, Fudge, Kilroy, Latta, Ryan, Sutton, Turner, Jordan, Schmidt, Space, Tiberi, Wilson, Kaptur, and Senators Brown and Voinovich.

Four offices denied us appointments to visit,

so if you are in those districts, please consider why these offices would not see Ohio podiatrists on our annual visit day.

They were Congressmen Boccieri, Driehaus, Kucinich and LaTourette.

Know that OPMA is very diligent in making these appointments annually. We begin in January by faxing the appointment secretaries in each office. With so many offices to see it's a busy day for OPMA.

This year was even more productive in that two APMA PAC receptions were also visited for Congresswomen Marcy Kaptur by Dr. Rumberg and Betty Sutton by Dr. Ferritto. Both have been co-sponsors for HR 1625 – The Equity and Access for Podiatric Physicians under Medicaid Act (Title XIX) during the 111th Congress.

# Ohio State Law on Record Retention and Copies

Effective January, 2010

## Retention of Medical Records

Medical considerations are the key basis for deciding how long to retain medical records. Rules relating to the maintenance of patient records are to be found in the American Medical Association, Council on Ethical and Judicial Affairs, Code of Medical Ethics. Current Opinion 7.05. Under Ohio Law (R.C. §4731.22 (8)(18)), violations of the AMA ethical rules can result in disciplinary action by the Ohio State Medical Board. Most states, including Ohio, do not have a general state law that requires records be kept for a minimum length of time. Ohio Revised Code §2913.40 (D) mandates the retention of records associated with Medicaid for a period of at least six (6) years after reimbursement for the claim is received by the physician. It is recommended that records relating to a Medicare patient be kept for at least six (6) years after the physician received payment for the service. Medicare's Conditions of Participation requires five (5) year retention. Man-

aged care contracts should be consulted to see if they provide any specified period of retention of medical records. In all cases, medical records should be kept for the length of time of the statute of limitations for medical malpractice claims. Under Ohio Law an action for medical malpractice must be brought within one year after the cause of action "accrues" (R.C. §2305.113). However, there are various exceptions or special rules. For example, the statute of limitations in wrongful death cases is two years after the date of death.

In the case of a minor, the statute of limitations does not begin to run until the minor has reached his or her 18th birthday. The statute can be "tolled" or otherwise extended in other situations, and the date on which a cause of action "accrues" can vary. As a practical matter, all of this makes it difficult to define the Ohio statute of limitations with absolute certainty. If you are discarding or destroying old records, patients should be given the opportunity to claim the records or have them sent to another physician. *The OPMA recommends that physicians keep medical records indefinitely, if feasible.*

## Update on Charging for Copies of Medical Records

A physician who treated a patient should not refuse for any reason to make records of that patient promptly available on request to another physi-

cian presently treating the patient, or, except in limited circumstances, refuse to make them available to the patient or a patient's representative (not an insurer). A written request signed by the patient or by what the law refers to, as a "personal representative or authorized person" is required. Ohio Revised Code §3701.74 obligates a physician to permit a patient or a patient's representative to examine a copy of all of the medical record. An exception arises when a physician who has treated the patient determines for clearly stated treatment reasons that disclosure of the requested record is likely to have an adverse effect on the patient, in which case the physician is to provide the record to a physician chosen by the patient. Medical records should not be withheld because of an unpaid bill for medical services. Ohio law establishes the maximum fees that may be charged by health care provider or medical records company that receives a request for a copy of a patient's medical record. Ohio law provides for certain limited situations in which copies of records must be provided without charge, for example, where the records are necessary to support a claim by the patient for Social Security disability benefits. EFFECTIVE JANUARY 2010, the maximum fees that may be charged, are as set forth below.

1. The following maximum fee applies when the request comes from

a patient or the patient's representative.

- a. No records search fee is allowed;
  - b. For data recorded on paper: \$2.73 per page for the first ten pages; \$0.57 per page for pages 11 through 50; \$0.23 per page for pages 51 and higher  
*For data recorded other than on paper: \$1.86 per page*
  - c. Actual cost of postage may also be charged
2. The following maximum applies when the request comes from a person or entity other than a patient or patient's representative.
    - a. \$16.78 records search fee is allowed;
    - b. For data recorded on paper: \$1.11 per page for the first ten pages; \$0.57 per page for pages 1 through 50: \$0.23 per page for pages 51 and higher.  
*For data recorded other than on paper: \$1.86 per page.*
    - c. The actual cost of postage may also be charged

Ohio Law requires the Director of Health to adjust the fee schedule annually, with the adjustment to be not later than January 31 of each calendar year, to reflect an increase or decrease in the Consumer Price Index over the previous 12-month period.

## Passings of Note

**DR. JOSEPH PATRICK MORAN**, age 83, of Hillsboro, died February 13, 2010 at his home. He was born November 2, 1926 in Cincinnati, Ohio the son of the late Clarence Henry and Mildred Mary Heist Moran. In 1945, Joe enlisted in the Army Air Force, where he served as a Corporal in the Army Air Force 460th Bomb Squad 333rd B GP and as the crew chief on a B-29 Superfortress. He was stationed in the South Pacific during World War II, serving stints in Okinawa and Iwo Jima. Following his honorable discharge from the military, he took a position at a shoe store

as a clerk, where he developed an interest in the care of feet and recognized the need for a podiatrist to serve the community. Joe graduated from the Ohio College of Chiropractic in 1953. He was one of the first podiatrists to serve the rural areas of Ohio and to become a member of the local hospital's medical staff. Joe continued his podiatry practice until 2007. Joe married the late Beverly Griffith and had five children. He later married Eloise Martin Yochum. Joe is survived by his wife Eloise Martin Yochum Moran; sisters, children, step-children, grandchildren, and great-grandchildren. Burial took place at the St. Mary Catholic Cemetery and the Highland County Honor Guard

accorded military honors.

| Source: *Middletown Journal* |

**DR. SEYMOUR SHAGRIN**, age 99, of Boca Raton, Florida and formerly Liberty Township. Services were held on Sunday, May 17. Dr. Shagrin, born and raised in Youngstown, graduated from The Rayen School, The Ohio State University and Ohio College of Podiatric Medicine. He was a founder of the Mahoning Valley Podiatry Society and served as President. Dr. Shagrin was elected Podiatrist of the Year in 1969 and 1975. He was a charter member of both the American Academy of Podiatric Medicine and the Academy of Ambulatory Foot Surgery, and was founder of the Mahoning Valley Foot Clinic. In 1982,

he was honored for 50 years of service by the American Podiatric Society. He retired from podiatry in 1986 after 54 years of practice. In 1935, he married Jean Yarmy and was happily married for 67 years. He is survived by two sons, a daughter, five grandchildren, and five great-grandchildren.

| Source: *Jewish Journal*, June 2009 |

**DR. GEORGE MATTHEW PETERSON** died on January 19, 2009. Dr. Peterson was a 1964 graduate of the Ohio College of Podiatry and graduated from Bethany College with a BS degree in 1951. He retired from practice following a stroke and became a life member in 1993 and resided in Bedford, Ohio.

| Source: *APMA*, March, 2010 |

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## Ohio Podiatrist Appointed

Governor Ted Strickland announced appointment of Richard Weiner, DPM, PA to The Medical Quality Foundation Board (OMQF), which funds activities to improve quality of medical care rendered to the public.

Dr. Weiner, of New Albany, has served as a podiatrist for the Grant Medical Center since 1991, as a fellow of the American College of Foot and Ankle Surgeons since 1992, and founded the Ohio Podiatry Institute in

2005. He is assistant professor of podiatry at Ohio University College of Osteopathic Medicine. He has a bachelor's from Ohio State University and a medical degree from the Ohio College of Podiatric Medicine.

Weiner is a member of the Ohio Podiatric Medical Association, where he has served in various capacities as a volunteer and Central Academy leader. He presented a full report of the OMQB at the 2009 OPMA HOD. Congratulations, Rick!

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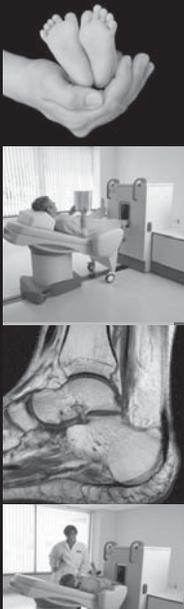
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## New CMS Signature Requirements

The Center of Medicare and Medicaid Services (CMS) introduced new rules on signatures designed to reduce the CERT (Comprehensive Error Rate Test) errors found in medical record reviews. The CMS CERT report stated that violators risk auditor rejection of claims and demands for repayments. In its latest error rate report, CMS' CERT review of signatures on medical records revealed that the error rate more than doubled to 7.8 percent in 2009. To help providers, CMS has detailed new rules on signatures.

Eight suggestions for providers to meet signature requirements on medical records include:

- Provide a legible full signature (a readable first name and last name).
- Provide a legible first initial and last name.
- Write an illegible signature over a typed or printed name.
- Write an illegible signature on letterhead with information indicating the identity of the signer. For example, there is an illegible signature appearing on a prescription. The letterhead of the prescription lists three physician names, one of which is circled, thus indicating the identity of the signer.
- Use an illegible signature accompanied by a signature log or attestation statement.

- Write initials over a typed or printed name.
- Write initials not over a typed or printed name, but accompanied by a signature log or attestation.
- Neglect to sign a portion of a handwritten note, but other entries on the same page in the same handwriting are signed.

Medical records, including physician orders and prescriptions without valid signatures, will be rejected by CERT auditors, and the claim will be denied for lack of medical necessity.



It should be noted that signature requirements written in national and local coverage determinations (NCDs and LCDs) trump CMS's signature requirements. For example, signatures on plans of care must be signed before those services are rendered, the Medicare Administrative Contractor First Coast said. CMS acknowledges that there are existing policies that don't require signatures. For example, orders for clinical diagnostic tests are not required to be signed. Medical documentation, such as a progress note, can support the order. The note must have a valid signature.

For more information on this and other CMS matters, attend the 2010 APMA Coding Seminar on Friday, April 23 at the Columbus Airport Marriott Hotel.

## EVERY STEP COUNTS

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### FDA Offers Text Message Safety Alerts

The US Food and Drug Administration (FDA) recently launched a new MedWatch Safety Information mobile text message program. The content of the text messages will consist of MedWatch Safety Alerts that provide timely new safety information on human drugs, medical devices, and other related topics. The messages contain actionable information that may impact both treatment and diagnostic choices for health care professionals and patients.

To sign up for the program, text "FDA" to 87000. You should expect to receive approximately three to five alert messages a week. Standard text messaging rates from your wireless carrier may apply.

### Coding Alert: Reporting Subtalar Arthroereisis Procedures

CPT 28899 (unlisted foot/toe procedure) or S2117 (arthroereisis, subtalar) are the only appropriate codes to be used when reporting performance of subtalar arthroereisis procedures.

No specific regular CPT code exists that accurately describes or represents a subtalar throereisis procedure. S2117 is a HCPCS II "Temporary National Code"

that is neither a regular CPT, nor is it uniformly recognized by payers.

| Source: APMA eNews |

### The APMA Buyers' Guide is at Your Fingertips

One of the easiest ways to find information about products for podiatrists is by using the "APMA Buyers' Guide-Commercial Reference to the Podiatric Office." This member benefit is easily accessible from the APMA members' home page. The APMA Buyers' Guide enables you to conveniently perform targeted searches for industry-related products and services. We feel confident you will find the Guide a valuable tool for researching, selecting, and purchasing the industry resources. You also can search the supplier network directly from your desktop by downloading the search tool! Visit [members.apma.org](http://members.apma.org) and click the APMA Buyers' Guide logo. On the Guide's main search page, click "Tools" at the top left of the screen and choose "Desktop Search Tool" from the dropdown menu. Follow the directions on the resulting Web site to complete the download. In order to further enrich the directory, let us know of reliable companies you regularly deal with that are not listed in the guide and APMA may add them for the benefit of all members. If you have any questions about the Guide, please contact the customer service staff at MultiView at (800) 816-6710.

### BWC will offer paperless payroll option

BWC has a new option to help employers simplify payroll reporting and pay their workers' compensation insurance premiums. A paperless option is now available that will notify employers of important filing deadlines by e-mail and allow them to securely pay their premiums online. This new option is convenient, environmentally friendly and cost-effective. Paperless payroll also allows an employer to future date his or her payment so it's never late. This eliminates the risk of operating without coverage. Enrollment in paperless payroll requires a user to have an [ohiobwc.com](http://ohiobwc.com) username and password. Employers interested in signing up for paperless payroll can go to [ohiobwc.com](http://ohiobwc.com) to begin receiving e-mail alerts in time for the July 1, 2010, payroll report.

### Report Suggests RACs Lack Incentive to Report Potential Fraud Cases to CMS

The Department of Health and Human Services' Office of Inspector General (OIG) recently issued a report titled *Recovery Audit Contractors' Fraud Referrals* in which the OIG examined how often recovery audit contractors (RAC) referred potential fraud cases to the Centers for Medicare & Medicaid Services (CMS) during the 3-year RAC demonstration project.

According to the Report, the RACs only referred to CMS two cases of potential fraud.

RACs are responsible for identifying improper Medicare payments, but not for reviewing claims for fraudulent activity. However, the RACs are responsible for referring to CMS any examples of potential fraud they identify during claim reviews. The OIG suggests that RACs may have a disincentive to refer potential fraud cases to CMS because RACs do not receive contingency fees on fraud cases. The OIG states that CMS did not train RACs during the demonstration project to identify and refer potential fraud cases to CMS.

As part of the Report, the OIG recommends that CMS:

- Conduct follow-up to determine the outcomes of the two referrals made during the demonstration project;
- Implement a database system to track fraud referrals; and
- Require that RACs receive training on the identification and referral of fraud.

In response to the Report, CMS reports that it has provided training sessions on fraud to RACs as part of the permanent Medicare RAC program and that CMS is discussing with the OIG and the Department of Justice additional training for RACs.

APMA provides additional information on RACs at [www.apma.org/medicare](http://www.apma.org/medicare).

| Source: APMA eNews #3006 |

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