

**Report to the APMA Board of Trustees
Historical Overview of APMA's Efforts to Amend Title XIX**

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The APMA House of Delegates, as part of Vision 2015, set a goal to seek recognition of podiatrists as physicians in all federal statute. Such recognition in federal law is essential since federal law provides statutory authority for crafting state laws, for gaining hospital privileges, for defending against legal challenges, and for seeking equal treatment in both private and public health plans.

Vision 2015 has furnished renewed momentum for the APMA's Title XIX initiative to recognize DPMs as physicians in the federal/state Medicaid program. The 111th Congress' focus on providing quality, cost effective health care to all Americans offered a realistic channel for APMA to advance this federal initiative. In fact, the initiative was included in the House health care reform bill HR 3962 in Section 1726.

It should be noted that early efforts to address Title XIX reviewed in this summary predate current APMA staff employment or involvement with Title XIX legislation. The information was assembled from the archived materials, memos and letters of former Director of Governmental Affairs, John Carson. Current legislative advocacy staff and the APMA Legislative Committee that was created in 2000 by the APMA Board of Trustees re-initiated activity on this issue.

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Overview

The Medicare and Medicaid programs were signed into law on July 30, 1965 by President Lyndon B. Johnson. Congress passed legislation in 1965 establishing the Medicare and Medicaid programs as Title XVIII and Title XIX, respectively, of the Social Security Act. Medicare was established in response to the

specific medical care needs of the elderly. Medicaid was established in response to the widely perceived inadequacy of welfare medical care under public assistance.

Title XIX of the Social Security Act is a Federal/State entitlement program that pays for medical assistance for certain individuals and families with low incomes and resources. This program is a cooperative venture jointly funded by the Federal and State governments (including the District of Columbia and the Territories) to assist States in furnishing medical assistance to eligible needy persons.

Coverage for the services of doctors of podiatric medicine was added to Title XVIII, the Medicare statute, in 1967 when, through the efforts of several politically active podiatrists in the American Podiatry Association, DPMs were added to the definition of physician in Title XVIII.

Resistance by the states, however, who are responsible along with the federal government for Title XIX expenditures, prevented that change from taking place in Title XIX. Instead, "podiatry services" were included as an optional service. There is no definition in the Title XIX statute for what constitutes "podiatry services," so it is generally assumed these are services provided by a podiatrist. Today we know there is virtually no distinction between the foot and ankle services provided by doctors of podiatric medicine and doctors of medicine or osteopathy.

Title XIX of the Social Security Act allows considerable flexibility within the States' Medicaid plans. Physicians' services are one of the basic required services, so including doctors of podiatric medicine as a physician who delivers physicians' services in Medicaid will effectively resolve the issue of exclusion of podiatric physicians from state Medicaid programs.

The Early Years

1971 – 1972: 92nd Congress

- First effort: to amend Title XIX through legislative reform of the Social Security Act (SSA)
- A major goal of SSA reform was to bring a halt to spiraling Medicaid costs
- APMA's effort to mandate DPM services through this SSA reform failed, primarily due to cost concerns by Congress and extreme opposition by state legislatures to what was considered a mandate to provide additional services by an optional provider

1973 – 1974: 93rd Congress

- APMA House of Delegates passed Resolution 14-73: *RESOLVED, That the American Podiatry Association make every possible effort to amend Title XIX in such a manner that podiatry would be included in the essential services required to be offered by states that have implemented the Medicaid program*

1975 – 1976: 94th Congress

- Second effort: to amend Title XIX through additional SSA reforms failed; states continued to object vehemently
- Congressional Champion: U.S. Rep. James C. Corman (D-CA)

1977 – 1978: 95th Congress

- Third effort: a bill, HR 3010, introduced in the House; enactment failed

- Congressional Champion: U.S. Rep. Lunsford Richardson Preyer (D-NC)

1981 – 1982: 97th Congress

- Fourth effort: correspondence indicates that a Congressional Budget Office (CBO) score was requested, a requirement henceforth for federal legislation to be acted upon
- Congressional Champion: Rep. Henry Waxman (D-CA), then Chair of the Health Subcommittee of Energy & Commerce, requested the score
 - CBO Score: \$8 million annually based on current coverage under Medicare

1985 – 1986: 99th Congress

- Fifth effort: a second bill, HR 3437, introduced in the House
- Sponsor & Congressional Champion: U.S. Representative Thomas A. Luken (R-OH); Co-Sponsors: Thomas J. Bliley (R-VA); William Richardson (D-NM); Richard Shelby (D-AL; currently R-AL)
- Attempt to include bill in Fiscal Year '87 budget reconciliation bill failed

1987 – 1988: 100th Congress

APMA House of Delegates passed Resolution 38-88: *RESOLVED, That this House of Delegates place a high legislative priority on measures to include podiatric medicine and the services of Doctors of Podiatric Medicine as mandated providers of care under Title XIX of the Social Security Act*

1989 – 1990: 101st Congress

- Sixth effort: Introduction of a bill pursued unsuccessfully
 - Congressional champion cultivated: Rep. William Dannemeyer (R-CA)
 - Two alternative options considered:
 - Current legislative language to change the physician definition in Title XIX
 - Legislative language requiring DPM services be covered "to the extent such services may be performed under State law" by a doctor of medicine
- Introduction of House Energy & Commerce Committee amendment to reconciliation bill pursued but was unsuccessful
 - Congressional champions: Reps. Douglas Walgren (D-PA) and Henry Waxman (D-CA), then Chair of the Health Subcommittee of Energy & Commerce
- Senate champion cultivated: Sen. Lloyd Bentsen (D-TX)
 - GLB Inc, (George L. Bristol) of Austin, Texas, contracted to assist with effort
- Contract consultant hired:
 - Health Policy Alternatives, of Washington, DC, retained to assist with development of data and arguments for Title XIX amendment and other regulatory issues

1991 – 1992: 102nd Congress

- APMA House of Delegates passed Resolution 30-92: *RESOLVED, That the APMA policy as stated in adopted Resolution No. 38-88 be strongly reaffirmed; and RESOLVED, That the APMA be requested to provide a full written report to the profession by January 1, 1993, on (a) what actions were taken to implement Resolution No. 38-88, (b) why these actions failed, and (c) a suggested course of action to solve the problem.*
- Report on 30-92 submitted to the APMA Executive Director, November 1992

Recent History

1999 – 2000: 106th Congress

- APMA Legislative Committee created
 - Charged with determining the legislative priorities of the APMA
 - Priorities included changing the definition of physician to recognize DPMs as physicians in Medicaid

2001 – 2002: 107th Congress

- APMA House of Delegates passed Resolution 10-02 which addressed a number of topics including: *RESOLVED, That the APMA will continue to seek a change in Title XIX defining podiatrists as physicians in the Medicaid program;*
- Responding to the charge of both the APMA House and the priorities of the legislative committee, APMA's in-house lobbyists conducted focused visits with key Congressional offices to determine the feasibility of this Title XIX directive

2003 – 2004: 108th Congress*

- APMA House passed Resolution 14-03: *RESOLVED, That APMA immediately seek a Congressional remedy that would include doctors of podiatric medicine in the definition of physicians along with MD and DO physicians in Federal TITLE XIX (Medicaid Statute); and RESOLVED, That APMA fulfill this objective within twelve months of the 2003 APMA House of Delegates (HOD), and submit a formal, written report on its efforts and progress to the 2004*
 - Report submitted along with a full report of APMA accomplishments to the APMA House in 2004
 - Title XIX was the primary Congressional visit issue for the 2003 Legislative Conference to test pursuing introduction of a bill to amend Title XIX
 - Result: lots of support from legislators; potential champions identified
 - Greater percentage of APMA's political action committee resources directed toward sitting members of Congressional health policy committees – Republicans and Democrats
- Seventh Effort: a third bill, HR 2959, introduced in the U.S. House July 25, 2003
 - APMA in-house lobbyist secured House bill sponsor, Rep. George Nethercutt (R-WA)
 - Efforts of APMA members in Washington state were critical in securing this commitment
 - Rep. Diana DeGette (D-CO) added as secondary sponsor making it a bipartisan bill
- **Companion Bill S 2174** – introduced in the Senate March 8, 2004
 - APMA in-house lobbyist secured Senate bill sponsor Sen. Jim Bunning (R-KY)
 - First Title XIX bill ever introduced in the Senate
 - Efforts of a single APMA member in Kentucky was critical in securing this commitment
 - Sen. Barbara Mikulski (D-MD) added as secondary sponsor making it a bipartisan bill
- APMA House passed Resolution 10-04: *RESOLVED, That the APMA House of Delegates commend the APMA leadership and staff for their work on H.R. 2959 and S. 2174, and continue to work to amend the Title XIX definition of Physician; and RESOLVED, That the APMA also pursue concurrently the enactment of an amendment to Title XIX allowing podiatry equal status to the rights enjoyed by optometrists, since 1972, to continue to provide "physician services within a state" even if so-called "optional services" are removed from the state's Medicaid program.*
- APMA contracted with Arent Fox, a premier Washington, DC lobby firm to assist with Title XIX by
 - Conducting an assessment of APMA resources

- Making strategy recommendations
- Recommending a targeted distribution of political action resources
- Arent Fox contract lobbyist moved to Gardner Carton & Douglas, adding resources to the Title XIX project
 - Concise plan of action laid out that continues to be followed today
- 2004 Legislative Conference primary issue: Title XIX and seeking co-sponsors
 - DPMs brought the issue to Congressional offices to obtain co-sponsorship commitments for HR 2959 and S 2174
- HR 2959 and S 2174 expired at the close of the 108th Congress with an impressive number of cosponsors obtained through the efforts of APMA's in-house lobbyists and APMA member grassroots activism:
 - HR 2959: 133 Cosponsors Introduced 7/25/2003
 - S 2174: 13 cosponsor Introduced 3/8/2004

2005 – 2006: 109th Congress

- Eighth Effort: New bills, **HR 699 and S 440**, were introduced in the 109th Congress and the process re-started
 - House bill sponsor: Rep. Diana DeGette (D-CO), who was joined as a primary sponsor by Reps. Michael Castle (R-DE), Xavier Becerra (D-CA), and Curt Weldon (R-PA). Rep. George Nethercutt gave up his House seat to run for the Senate against Sen. Patty Murray (D-WA) in 2004 and lost
 - Senate bill sponsor: Sen. Jim Bunning (R-KY) joined by Sen. Barbara Mikulski (D-MD)
- Contract lobbyist retained, providing ongoing guidance and assistance to APMA's effort
- **Senate Finance Committee Chairman Charles Grassley (R-IA) included S 440 in the Deficit Reduction Omnibus Reconciliation Act of 2005 (S 1932) passed in the Senate, but it was removed during conference committee by the House**
- HR 2959 and S 2174 expired at the close of the 109th Congress with an even more impressive number of cosponsors obtained through the efforts of APMA's in-house lobbyists and APMA member grassroots activism:
 - HR 699: 210 Cosponsors Introduced 2/9/2005
 - S 440: 28 Cosponsors Introduced 2/17/2005

2007 – 2008: 110th Congress

- Ninth Effort: New bills, **HR 1647 and S 399**, were introduced in the 110th Congress and the process started again
 - House bill sponsor: Rep. Diana DeGette (D-CO), who was joined this time by Reps. Michael Castle (R-DE), Xavier Becerra (D-CA), and Mark Kirk (R-IL). Rep. Curt Weldon lost his seat in the 2006 election
 - Senate bill sponsor: Sen. Jim Bunning (R-KY) joined by Sen. Barbara Mikulski (D-MD)
- Contract lobbyist retained, providing ongoing guidance and assistance to APMA's effort through October 2008 (the end of the 110th Congress)
- HR 1647 and S 399 expired at the close of the 110th Congress with more than 50 percent of U.S. Representatives H.R. 1647. In addition to a majority in the House and a third of the Senate, a majority of both House and Senate health policy committees were cosponsors:
 - HR 1647: 221 Cosponsors Introduced 3/22/2007
 - S 399: 33 Cosponsors Introduced 1/25/2005

2009 – 2010: 111th Congress

- APMA House passed Resolution 11-09 to amend Title XIX: *RESOLVED, That the American Podiatric Medical Association (APMA) be given the full support of the 2009 APMA House of Delegates in the continued pursuit of the recognition of podiatrists as physicians in Title XIX; and RESOLVED, That all alternatives to this effort be set aside including the directives of Resolution 10-04 that call for APMA to pursue a concurrent amendment to Title XIX to allow podiatrists to have equal rights to optometrists “to provide ‘physician services within a state’ even if so called ‘optional services’ are removed from the state’s Medicaid program.”*
- Tenth Effort: Again new bills, **HR 1625** and **S 654**, were introduced in the 111th Congress and the process started yet again
 - House bill sponsor: Rep. Diana DeGette (D-CO), who was joined again by Reps. Michael Castle (R-DE), Xavier Becerra (D-CA), and Mark Kirk (R-IL)
 - Senate bill sponsor: Sen. Jim Bunning (R-KY) joined by Sen. Barbara Mikulski (D-MD)
- As of March 19, the bills had gained 118 House and 16 Senate cosponsors
- **The Title XIX bill was incorporated into the House health care reform bill, HR 3962, and passed by that chamber in November 2009**
- Health care reform, which contains Medicaid reform provisions, was the logical vehicle for APMA’s Title XIX legislation in this Congress
- CRD Associates retained to assist with budget reconciliation process for health reform
- Title XIX provision eliminated from health reform legislation on March 18
- Effort is ongoing to identify alternative method for enacting HR 1625 and S 654

Outside Consultants and other Resources

“K Street” lobbying firms:

Arent Fox
Gardner, Carton, Douglas.
Drinker Biddle & Reath LLP
CRD Associates
Health Policy Alternatives

Advocacy consultants:

Michael E. Dunn & Associates
Public Affairs Council
The Showalter Group, Inc.

OPEIU Provided Resources:

The Gephardt Group
AFL & OPEIU DC lobbyists

Cost to APMA from 2004 to 2010 for consultant services related to Title XIX efforts: \$750,000

APMAPAC Contribution to Support Podiatry Initiatives

It is impossible to quantify exactly how much of AMPAPAC’s contributions to candidates were made solely to help move the Title XIX or any other initiative forward. It is accurate to say that a preponderance of funds has gone to members of Congress who serve on the committees that have jurisdiction over health care – all health care, not just Medicaid. Over the past seven years APMA has also successfully fought for other issues:

- opting out of Medicare;
- the DME accreditation exemption;

- exclusion from the DME surety bond requirement;
- eligibility for e-prescribing and reporting quality measures;
- in 2009 eligibility of \$44,000 in bonuses for using and reporting EHR use.

All these victories were won on the basis that DPM's are recognized as physicians in Medicare.

In 2006 APMA began tracking Congressional fundraising events supported by funds from the PAC. Between 2006 and 2010, APMA staff, and occasionally APMA members, attended more than a thousand fundraisers for members of Congress or their leadership PACs –over 500 of them with members of Congressional health policy committees. That equates to 1,000 occasions for face-to-face opportunities to talk about and be the face of podiatry with approximately 350 lawmakers and their staff – at a cost to the APMAPAC of more than \$1.6 million.

It is the opportunities that PAC dollars provide for these connections that are without a doubt more beneficial than anything paid to a consultant.



SSA Title XVIII DEFINITION OF PHYSICIAN

SEC. 1861. [42 U.S.C. 1395x] For purposes of this title—

Physician

(r) The term “physician”, when used in connection with the performance of any function or action, means (1) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action (including a physician within the meaning of section 1101(a)(7)), (2) a doctor of dental surgery or of dental medicine who is legally authorized to practice dentistry by the State in which he performs such function and who is acting within the scope of his license when he performs such functions, (3) a doctor of podiatric medicine for the purposes of subsections (k), (m), (p)(1), and (s) of this section and sections 1814(a), 1832(a)(2)(F)(ii), and 1835 but only with respect to functions which he is legally authorized to perform as such by the State in which he performs them, (4) a doctor of optometry, but only for purposes of subsection (p)(1) with respect to the provision of items or services described in subsection (s) which he is legally authorized to perform as a doctor of optometry by the State in which he performs them, or (5) a chiropractor who is licensed as such by the State (or in a State which does not license chiropractors as such, is legally authorized to perform the services of a chiropractor in the jurisdiction in which he performs such services), and who meets uniform minimum standards promulgated by the Secretary, but only for the purpose of sections 1861(s)(1) and 1861(s)(2)(A) and only with respect to treatment by means of manual manipulation of the spine (to correct a subluxation) which he is legally authorized to perform by the State or jurisdiction in which such treatment is provided. For the purposes of section 1862(a)(4) and subject to the limitations and conditions provided in the previous sentence, such term includes a doctor of one of the arts, specified in such previous sentence, legally authorized to practice such art in the country in which the inpatient hospital services (referred to in such section 1862(a)(4)) are furnished.

SSA TITLE XIX DEFINITION OF PHYSICIAN SERVICES

SEC. 1905. [42 U.S.C. 1396d] For purposes of this title--

(a) The term "medical assistance" means payment of part or all of the cost of the following care and services

(5)(A) physicians' services furnished by a physician (as defined in section 1861(r)(1)), whether furnished in the office, the patient's home, a hospital, or a nursing facility, or elsewhere, and (B) medical and surgical services furnished by a dentist (described in section 1861(r)(2)) to the extent such services may be performed under State law either by a doctor of medicine or by a doctor of dental surgery or dental medicine and would be described in clause (A) if furnished by a physician (as defined in section 1861(r)(1));

March 20, 2010