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March 7, 2014

VIA ELECTRONIC TRANSMISSION

Kirstin Blom
Jean Hearne
Lisa Ramirez-Branum
Congressional Budget Office
Ford House Office Building, 4th Floor
Second and D Streets, SW
Washington, DC 20515-6925

RE: CBO cost estimate of the HELLPP Act provisions in S 1871

Dear Ms. Blom, Ms. Hearne and Ms. Ramirez-Branum:

Thank you for taking the time on January 13, 2014 to discuss the provisions of the Helping Ensure Life- and Limb-Saving Access to Podiatric Physicians (HELLPP) Act. We appreciated the opportunity to review with you the empirical and real world evidence in several studies concluding that foot and ankle care provided by podiatrists not only improves medical outcomes, but also produces significant health-care cost savings.

Medicaid Provision

Given the conclusions of these studies—and the several changes in the Medicaid landscape since the Congressional Budget Office (CBO) last scored the main component of the HELLPP Act in 2009—**the American Podiatric Medical Association (APMA) takes strong exception to CBO's budgetary impact estimate of the HELLPP Act provisions (Sec. 254) in the *SGR Repeal and Medicare Beneficiary Improvement Act of 2013* (S 1871) released on January 24, 2014 and urges you to review our information in the future.**

CBO scored the *Equity and Access for Podiatric Physicians Under Medicaid Act* in 2009 as part of HR 3962, the *Affordable Health Care for America Act (AHCAA)*, as introduced. The provision would have defined podiatrists as "physicians" under Medicaid. In 2009, the budgetary impact was estimated to increase federal spending by $200 million over 10 years. An earlier CBO estimate of the same provision was $135 million over 10 years as part of the Reconciliation Recommendations of the Senate Committee on Finance (October 27, 2005).

The recent changes to Medicaid coverage since CBO's 2009 estimate uphold the very real likelihood of a lower cost estimate than that which your office currently estimates:

- ***Medicaid Expansion population is smaller*** — The House health reform legislation upon which the 2009 CBO estimate was based called for the expansion of Medicaid to all

individuals under age 65 (children, pregnant women, parents, and adults without dependent children) with incomes up to 150% of the Federal Poverty Level (FPL). The ACA as enacted into law stipulates a reduced Medicaid expansion only to 133% of FPL.

- ***Medicaid Expansion is optional*** — The Supreme Court's ACA decision determined that the statute's Medicaid program expansion must be optional for states. Consequently, CBO projects that about 6 million fewer people will be enrolled in Medicaid and overall Medicaid spending will be reduced by $289 billion over 10 years.

These two very important factors—in addition to the fact that the number of states excluding podiatrists from their Medicaid programs has diminished since 2009—make it puzzling from our perspective how CBO could have inflated its budgetary cost estimates since 2009.

The definitional inclusion of doctors of podiatric medicine (DPMs) as physicians under Medicaid in the HELLPP Act does not *ipso facto* add any additional medical or surgical services or benefits under the Medicaid program. It simply provides Medicaid patients with access to the group of medical professionals that provides medical and surgical foot and ankle care in the most beneficial and cost effective manner. As the Arizona Medicaid experience study confirms, under current law, in the absence of access to podiatrists, Medicaid patients will often seek care in a more expensive setting (e.g., hospital emergency rooms).

Medicare Provision

Additionally, we regret that we did not broach the Medicare Therapeutic shoe section of the HELLPP Act during our conference call since we could have clarified potential misunderstanding as to what the provision would change compared to current law.

As can be gleaned from the attached side-by-side comparison with current law, the HELLPP Act's Medicare Therapeutic shoe provisions **would not** in any way expand the Therapeutic Shoe program. This section of the bill is in essence a paper work clarification in how the three main medical professionals interact and maintain records for furnishing this medically necessary benefit.

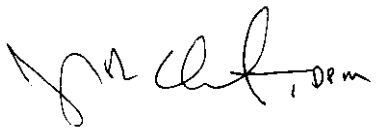
The current processes and Medicare contractor requirements for determining eligibility for Medicare's Therapeutic Shoe Program for patients with diabetes, and for furnishing this medically necessary benefit have led to frustration on the part of the certifying physician, prescribing doctor, and supplier. The clarifications in the legislation would remove confusion and regulatory inconsistencies in the provision of this medically necessary benefit. They would allow each member of the collaborative team—medical doctor (MD)/doctor of osteopathy (DO), DPM, and supplier—to work together more effectively and seamlessly on behalf of diabetic patients, resulting in less patient confusion, less provider frustration, and fewer physician office visits for the Medicare program.

Specifically, the language would allow Medicare to conform with the "real world" of health-care delivery concerning how therapeutic shoes for diabetic patients are diagnosed, evaluated, and furnished. The clarifications would statutorily legitimize and recognize the prescribing podiatrist's (and other qualified physician's) lower-extremity examinations, determination of foot pathology, and the medical necessity for therapeutic shoes/inserts when making a case (to CMS and auditors) for qualifying Medicare's therapeutic shoe and insert benefit for their patients with diabetes. Again, this is not in any way an expansion of the program.

We understand the tight time constraints under which CBO often has to operate. Our understanding of your policy analysis would be greatly enhanced if you were to share the assumptions on which your cost estimate is based. We would welcome the opportunity to discuss these issues in more detail, as we believe such dialogue could shed additional light on your office's cost estimates concerning the HELLPP Act provisions.

Thank you for your time and attention to these important issues. Please do not hesitate to contact me or anyone else on APMA staff if we can be of further help.

Sincerely,



James R. Christina, DPM
Director, Scientific Affairs
American Podiatric Medical Association

Attachment: **Side by Side Comparison of Current Law vs. HELLPP Act (HR 1761 / S 1318)**

cc: The Honorable Charles E. Schumer
The Honorable Chuck Grassley

Side by Side Comparison of Current Law vs. HELLPP Act (HR 1761 / S 1318)

Current Law	HR 1761 / S 1318	Codification
	SECTION 1. SHORT TITLE. This Act may be cited as the ‘‘Helping Ensure Life and Limb-Saving Access to Podiatric Physicians Act’’ or the ‘‘HELLPP Act’’.	
§ 1905(a)(5)(A), Social Security Act ***[42 U.S.C. 1396d]*** For purposes of this title — (a) The term “medical assistance” means payment of part or of all 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 … *[Statutory Note and Reference — Sec. 1861(r)(1) of the Social Security Act defines the term “physician” under the Medicare program as including: “a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action …”]*	**SEC. 2. RECOGNIZING DOCTORS OF PODIATRIC MEDICINE AS PHYSICIANS UNDER THE MEDICAID PROGRAM.** (a) IN GENERAL.—Section 1905(a)(5)(A) of the Social Security Act (42 U.S.C. 1396d(a)(5)(A)) is amended by striking ‘‘section 1861(r)(1)’’ and inserting ‘‘paragraphs (1) and (3) of section 1861(r)’’. *[Statutory Note and Reference — Sec. 1861(r)(3) of the Social Security Act further defines the term “physician” under the Medicare program as including: “a doctor of podiatric medicine …”]* (b) EFFECTIVE DATE.— (1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to services furnished on or after	***[42 U.S.C. 1396d]*** (a) The term “medical assistance” means payment of part or of all of the following care and services … (5) (A) physicians’ services furnished by a physician (as defined in paragraphs (1) and (3) of section 1861(r) ~~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 …

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	January 1, 2014. (2) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirement imposed by the amendment made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.	
§ 1861(s)(12), Social Security Act ***[42 U.S.C. 1396d]*** (12) subject to section 4072(e) of the Omnibus Budget Reconciliation Act of 1987[515], extra-depth shoes with inserts or custom molded shoes with inserts for an individual with diabetes, if—	**SEC. 3. CLARIFYING MEDICARE DOCUMENTATION REQUIREMENTS FOR THERAPEUTIC SHOES FOR PERSONS WITH DIABETES.** (a) IN GENERAL.—Section 1861(s)(12) of the Social Security Act (42 U.S.C. 1395x(s)(12)) is amended to read as follows: (12) subject to section 4072(e) of the Omnibus Budget Reconciliation Act of 1987, extra-depth shoes with inserts or custom molded shoes with inserts (in this paragraph referred to as ‘therapeutic	***[42 U.S.C. 1396d]*** (12) subject to section 4072(e) of the Omnibus Budget Reconciliation Act of 1987[515], extra-depth shoes with inserts or custom molded shoes with inserts (in this paragraph referred to as ‘therapeutic shoes’) for an individual with

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	shoes') for an individual with diabetes, if —	diabetes, if —
(A) the physician who is managing the individual's diabetic condition — (i) documents that the individual has peripheral neuropathy with evidence of callus formation, a history of pre-ulcerative calluses, a history of previous ulceration, foot deformity, or previous amputation, or poor circulation, and (ii) certifies that the individual needs such shoes under a comprehensive plan of care related to the individual's diabetic condition;	(A) the physician who is managing the individual's diabetic condition — (i) documents that the individual has diabetes; (ii) certifies that the individual is under a comprehensive plan of care related to the individual's diabetic condition; and (iii) documents agreement with the prescribing podiatrist or other qualified physician (as established by the Secretary) that it is medically necessary for the individual to have such extra-depth shoes with inserts or custom molded shoes with inserts;	(A) the physician who is managing the individual's diabetic condition — (i) documents that the individual has diabetes; ~~peripheral neuropathy with evidence of callus formation, a history of pre-ulcerative calluses, a history of previous ulceration, foot deformity, or previous amputation, or poor circulation~~, ~~and~~ (ii) certifies that the individual is ~~needs such shoes~~ under a comprehensive plan of care related to the individual's diabetic condition, and (iii) documents agreement with the prescribing podiatrist or other qualified physician (as established by the Secretary) that it is medically necessary for the individual to have such extra-depth shoes with inserts or custom molded shoes with inserts;
(B) the particular type of shoes are prescribed by a podiatrist or other qualified physician (as established by the Secretary); and	(B) the therapeutic shoes are prescribed by a podiatrist or other qualified physician (as established by the Secretary) who— (i) examines the individual and determines the medical necessity for the individual to receive the therapeutic shoes; and (ii) communicates in writing the medical necessity to a certifying doctor of medicine or osteopathy for the individual to have therapeutic shoes along with findings that the individual has peripheral neuropathy with evidence of callus formation, a history of pre-	(B) the ~~particular type of~~ therapeutic shoes are prescribed by a podiatrist or other qualified physician (as established by the Secretary)~~; and~~ who— (i) examines the individual and determines the medical necessity for the individual to receive the therapeutic shoes; and (ii) communicates in writing the medical necessity to a certifying doctor of medicine or osteopathy for the individual to have therapeutic shoes along with findings that the individual has peripheral neuropathy with evidence of callus formation, a history of pre-

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	ulcerative calluses, a history of previous ulceration, foot deformity, previous amputation, or poor circulation (or any combination thereof); and	ulcerative calluses, a history of previous ulceration, foot deformity, previous amputation, or poor circulation (or any combination thereof); and
(C) the shoes are fitted and furnished by a podiatrist or other qualified individual (such as a pedorthist or orthotist, as established by the Secretary) who is not the physician described in subparagraph (A) (unless the Secretary finds that the physician is the only such qualified individual in the area);	(C) the therapeutic shoes are fitted and furnished by a podiatrist or other qualified supplier individual (as established by the Secretary), such as a pedorthist or orthotist, who is not the physician described in subparagraph (A) (unless the Secretary finds that the physician is the only such qualified individual in the area);''. (b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to items and services furnished on or after January 1, 2014.	(C) the therapeutic shoes are fitted and furnished by a podiatrist or other qualified supplier individual (as established by the Secretary), such as a pedorthist or orthotist, ~~as established by the Secretary)~~ who is not the physician described in subparagraph (A) (unless the Secretary finds that the physician is the only such qualified individual in the area);

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26 U.S.C. § 6331 — LEVY AND DISTRAINT (h) **Continuing levy on certain payments** (1) **In general** If the Secretary approves a levy under this subsection, the effect of such levy on specified payments to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released. Notwithstanding section 6334, such continuous levy shall attach to up to 15 percent of any specified payment due to the taxpayer. (2) **Specified payment** For the purposes of paragraph (1), the term "specified payment" means— (A) any Federal payment other than a payment for which eligibility is based on the income or assets (or both) of a payee, (B) any payment described in paragraph (4), (7), (9), or (11) of section 6334 (a), and (C) any annuity or pension payment under the Railroad Retirement Act or benefit under the Railroad Unemployment Insurance Act. (3) **Increase in levy for certain payments** Paragraph (1) shall be applied by substituting "100 percent" for "15 percent" in the case of any specified payment due to a vendor of	**SEC. 4. BUDGET SAVINGS: STRENGTHENING MEDICAID PROGRAM INTEGRITY THROUGH CONTINUOUS LEVY ON PAYMENTS TO MEDICAID PROVIDERS AND SUPPLIERS.** (a) IN GENERAL.—Section 6331(h)(2) of the Internal Revenue Code of 1986 (defining specified payment) is amended by striking ''and'' at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting '', and'', and by adding at the end the following new subparagraph: ''(D) any payment to any medicaid provider or supplier under a State plan under title XIX of the Social Security Act.''.	**26 USC § 6331 — LEVY AND DISTRAINT** (h) **Continuing levy on certain payments** (1) **In general** If the Secretary approves a levy under this subsection, the effect of such levy on specified payments to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released. Notwithstanding section 6334, such continuous levy shall attach to up to 15 percent of any specified payment due to the taxpayer. (2) **Specified payment** For the purposes of paragraph (1), the term "specified payment" means— (A) any Federal payment other than a payment for which eligibility is based on the income or assets (or both) of a payee, (B) any payment described in paragraph (4), (7), (9), or (11) of section 6334 (a), ~~and~~ (C) any annuity or pension payment under the Railroad Retirement Act or benefit under the Railroad Unemployment Insurance Act~~.~~ , and, (D) any payment to any medicaid provider or supplier under a State plan under title XIX of the Social Security Act. (3) **Increase in levy for certain payments** Paragraph (1) shall be applied by substituting "100 percent" for "15 percent" in the case of any specified payment due to a vendor of

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property, goods, or services sold or leased to the Federal Government.	(b) EFFECTIVE DATE.—The amendments made by this section shall apply to levies issued after the date of the enactment of this Act.	property, goods, or services sold or leased to the Federal Government.