

# ***HOW PODIATRY GOT ITS FOOT IN THE DOOR***

Take a look at just some of the past accomplishments associated with organized podiatry:

**1923:** Scope of Practice Act established the State Board and defined scope of practice as the "treatment of human foot by any system or method" if the primary diagnosis was in the foot. Anatomically, "the dome of the talus" was the dorsal limit.

**1963:** President Kennedy signed into law the *Health Professions Educational Assistance Act of 1963*. (1) matching grants to health professional schools for the construction of new facilities and (2) grants to schools for student loans. These new Federal initiatives are designed of medicine, osteopathy, dentistry, podiatric medicine, pharmacy, optometry, and nursing.

**1965:** Medicare Enacted, Podiatrists Excluded!

**1967:** Blue Cross Blue Shield agreed to pay podiatry in Texas.

**1967:** In President Johnson's health message to the Congress, certain types of podiatry services are important to the health of the elderly. Yet, these services are excluded under present law. I recommend that foot treatment, other than routine care, be covered under Medicare whether performed by Podiatrists or other physicians.

**1967:** The Social Security Amendments of 1967 which provide for the inclusion of podiatrists' services under MEDICARE were passed by both houses of Congress on December 15 and will be signed by the President sometime before the end of 1967. This means that effective January 1, 1968, the podiatrist will be included in the Medicare Act's definition of physician with respect to those functions which he is legally authorized to perform.

**1967:** Routine foot care and certain other non-surgical procedures regardless of who provides these services would be excluded in the same manner that routine physical examinations, eyeglasses, eye examinations, most dental services, and hearing aids are excluded.

**1971:** UTHSC at San Antonio agreed to a one year podiatry residency. The importance of including the podiatry residency, which is funded by the State of Texas, is a TPMA accomplishment. Prior to this law, surgery was being done by the residents, but they were under family practice. When this bill was signed, the chairman of the department of orthopedics demanded that they credential those participating in the surgical procedures. We then became the podiatry service to the orthopedic department. This was not an unpleasant experience as we already had in place the surgical categories, i.e. I, II, and III. The other major hospitals in this state followed this same guideline.

**1971:** A bill mandating all insurance companies in Texas to recognize and pay podiatrist on parity with allopathic medicine.

**1972:** Medicare Recognizes Podiatric Medical Residencies

**1972:** Jerry Patterson, DPM, first resident funded for \$5000 by TPMA.

**1973:** State Legislature by H.B. No. 1216 adopted to create a college of podiatry in The University of Texas System.

**1973:** Health Maintenance Organization Act Enacted. P.L. 93-222 states that any services which a podiatrist is licensed to provide under applicable state law may be provided through an HMO and are considered to be physician services. The HMO is authorized to employ podiatrists, and other health specialists, to meet the needs of its enrollees.

**1974:** Housing and Community Development Act. September 19. The recent enactment of the *Housing and Community Development Act* qualified doctors of podiatric medicine for an important Federal benefit program. Until

this year's amendment, only doctors of medicine, dentistry and optometry qualified for these FHA benefits. Podiatrists are now equally eligible for this special FHA loan guarantee program.

**1975:** The State of Texas agreed to continue the residency.

**1975:** Federal Employees Compensation Act Amended. FECA's definition of physician has been expanded to include the podiatrists.

**1976:** Following the enactment in 1974 of the *Federal Employees Compensation Act Amendments*, which specified the podiatrist as a participating physician, the U.S. Department of Labor has chosen to administratively recognize the podiatrist as a physician for all remaining Federal compensation programs, which include:

- \* The Longshoreman's and Harbor Workers' Compensation Act
- \* Defense Base Act
- \* District of Columbia Workmen's Compensation Act
- \* Outer Continental Shelf Lands, Act, and
- \* Title IV of the Federal coal mine Health and Safety Act

**1976:** VA Law Bolsters Foot Health: On October 21<sup>st</sup>, President Gerald Ford signed into law the *Veterans Omnibus Health Care Act of 1976*. Public Law 94-581, which strengthens the VA's hospital and medical care programs. Seeking an improved Podiatry program in the VA, P.L. 94-581 authorizes for veterans a significantly improved foot health component. Specifically, the new law does the following:

- \* Places podiatric medicine in the Department of Medicine and Surgery's Title 38 pay and classification.
- \* Establishes a Podiatry Service in the VA Central office to coordinate and direct an expanded foot health program for veterans.
- \* Creates the position of Director for that new Service.
- \* Authorizes 100 new podiatric hires, which are to be attained at the rate of 20 each year through FY 81

**1977:** Part time residency director funded by the State of Texas.

**1978:** On June 1<sup>st</sup>, the Committee recommended \$75 million for the National Health Service Scholarships, an increase of \$15 million over the budget request and the comparable 1978 appropriation. Scholarships will be awarded to medical, dental, osteopathic, podiatry, and other students of the health professions in exchange for a specified period of federal service in the National Health Service Corps.

**1978:** On October 27<sup>th</sup>, the U.S. Office of Personnel Management announced today that the U.S. Public Health Service had been authorized to commission doctors of podiatric medicine. As Commission corps members, podiatrists are eligible to join their medical, dental, and nursing colleagues as U.S. Public Health Service officers in the various branches of Federal Service.

**1978:** Feasibility study for podiatric medicine completed.

**1979:** DHEW Awards, NHSC Scholarships (average scholarship is \$11,700). Students receive tuition and fees, paying to cover books, supplies and equipment and a \$453 monthly stipend. Of the 1979-80 scholarships, 2,379 were for new participants in the program. They were distributed among students in medicine, 1719; osteopathy, 188, dentistry, 185; podiatry, 106; baccalaureate nursing, 80.

**1980:** Omnibus Budget Act- Medicare Improvements. Among those modifications are several which favorably impact on podiatric medicine. These improvements include:

- \* Deleting from Title XVIII any reference to "chiroprody" and substituting "doctor of podiatric medicine."
- \* Authorizing podiatrists as physicians for the purpose of making the required certification and recertification of the medical necessity for outpatient physical therapy services, inpatient hospital care, skilled nursing and home health care.
- \* Permitting podiatrists to serve as physician members of hospital utilization review committees.
- \* Eliminates the exclusion of plantar warts as a Medicare benefit.

**1983:** Public Law 98-139 carries an important new initiative for podiatric medical education. Within the new law is a \$1 million federal resource for colleges of podiatric medicine to study and implement programs which will result in increased enrollments at the colleges. This results from the recognition by both the Congress and the Administration that the future beckons for increased numbers of podiatric medical practitioners.

**1983:** Inclusion of podiatrists in “*Freedom of Choice*” provision under health and accident policies (Article 21.52, Insurance Code).

**1984:** The Deficit Reduction Act was signed into law July 18, by President Reagan. Among its numerous provisions are two that favorably impact on podiatric medicine. First, doctors of podiatric medicine are recognized as Medicare physicians for purposes of independently prescribing a plan of outpatient physical therapy care and services. Secondly, a podiatric physician is also permitted to participate in Medicare's ambulatory surgical service program. Neither had been possible prior to the new law's enactment.

**1984:** On October 5<sup>th</sup>, President Reagan signed into the law the *Omnibus Defense Authorization Act* which directed the Department of Defense to develop a plan of action addressing ways and means to counter grievances among military podiatrists. Very much second class citizens in the military, commissioned podiatry officers seldom stay beyond one tour of duty. Wanting to retain their services beyond a single tour, the Congress has directed an acceptable plan be developed which will achieve that objective.

**1985:** Texas Hospital Access Bill passed and was signed into law on May 24, 1985 by Governor Mark White. This has been the most fruitful legislation concerning podiatry. The intent of this law was to permit qualified podiatrist parity with allopathic medicine. TXPAC IS RESPONSIBLE FOR THIS BILL!

**1985:** Authorizing use of the designation “*podiatric physician*” (Article 4567b, VATS).

**1987:** Two hundred and twenty-four members of the U.S. House of Representatives and fifty seven U. S. Senators co-sponsored legislation which respectfully requested that the President issue a proclamation designating the week of August 2, 1987, as National Podiatric Medicine Week.

**1987:** Prohibition against HMO's denying participation to podiatrists and/or refusing to provide an opportunity to be considered for participation (Article 20A.14(g), Insurance Code).

**1987:** Prohibition against refusal to accept certification of acute and temporary disability by a podiatrist for insurance purposes (Article 21.52A, Insurance Code)

**1989:** Inclusion of a podiatrist on the Workers' Compensation Medical Advisory Committee (Article 8308-8.23, /VATS).

**1989:** Provision for podiatry Malpractice Claim Reports (Article 4573b, VATS).

**1989:** Authorization for registered nurses to administer medications or treatments as ordered by a podiatrist (Section 5, Article 4518, VATS).

**1989:** Inclusion of podiatrists as eligible providers of medical benefits to needy persons authorized to receive same under Federal programs (Section 32.027, Human Resources Code).

**1989:** Inclusion of podiatry services in the Texas Primary Care Services Act (Section 31.002(a)(4), Health and Safety Code).

**1991:** Authorization for podiatrists to own professional associations (PA's) with physicians (Section 2(A), Article 1528f, VATS).

**1993:** Passed Texas State Board of Podiatry Examiners Sunset Bill continuing the Board and podiatric medical scope of practice until September 1, 2005 (Article 4568b, VATS).

**1993:** Passed Texas legislation protecting TPMA's Peer Review Committee and others participating in the process from potential civil liability and providing that the process is confidential and not subject to subpoena or discovery in any civil or administrative proceeding.

**1993:** Passed Texas legislation mandating a Legislative Interim Committee Study regarding the “willing provider” issue. The Interim Committee will recommend legislation regarding this issue for consideration in 1995.

**1995:** SB 965 passed the Texas legislature which provides that hospitals may not require graduate medical education (residency programs) or board certification as a condition for medical staff membership or privileges for DPMs.

**1995:** Passed amendments to the Podiatry Practice Act to provide (a) podiatric patient records and communications are confidential and privileged; (b) podiatrists may provide podiatry services on behalf of a health organization approved by the Texas State Board of Medical examiners under Section 5.01 (c) of the Medical Practices Act, and; (c) changes name of the Board to Texas State Board of Podiatric Medical Examiners and includes numerous technical “clean up” revisions to practice act.

**1995:** Patient Protection Act (HB 2766) imposed regulations on HMOs and PPOs by requiring due process for providers, utilization review safeguards, and a “point of service” option to allow enrollees access to providers who are not members of the network. Initially applied only to dentists and MDs, it was amended in the House to include podiatrists. HB 2766 would have gone a long way toward eliminating many of the arbitrary and discriminatory practices and would have given the Commissioner of Insurance additional regulatory authority regarding provider participation in HMO and PPO plans, however this bill was vetoed by Governor Bush because, in his view, it would increase costs to state and local governments and private employers.

**1996:** Obtained Attorney General’s Opinion Number DM-423 which ruled that DPMs may administer hyperbaric oxygen therapy to treat any disease, disorder, physical injury, deformity, or ailment of the human foot.

**1997:** Passed legislation mandating health insurance coverage for individuals with diabetes (Article 21.53D and Article 21.53G, Insurance Code).

**1997:** Passed managed care reform legislation which included the following safeguards for providers in a managed care setting (Article 3.70-3C, Insurance Code):

- Practitioners must be given a fair and reasonable opportunity to become preferred providers.
- Practitioners who are denied participation as a preferred provider must be afforded a review mechanism which incorporates a review panel of practitioners one of whom is of the same specialty. The recommendation of the review panel must be provided to the affected practitioner.
- Every contract with a practitioner shall include a mechanism for the resolution of complaints initiated by the practitioner who provides for reasonable due process and a review panel of practitioners one of whom is of the same specialty.
- Before terminating a contract with a preferred provider, the insurer shall provide written reasons for the termination and, upon request, a reasonable review mechanism which includes a review panel of practitioners one of whom is of the same specialty. If the insurer takes any action which is contrary to the recommendation of the review panel, the practitioner who is being terminated shall be entitled to an expedited appeal which shall comply with rules established by the Commissioner of Insurance.
- A preferred provider contract may not require a practitioner to execute hold harmless clauses which shift the insurer’s tort liability resulting from acts of omissions of the insurer to the preferred provider.
- No insurer shall engage in any retaliatory action against a practitioner, including termination or refusal to renew a contract, because the practitioner has filed a complaint against the insurer or has appealed a decision of the insurer.
- An insurer shall not prohibit or attempt to prohibit or discourage a practitioner from discussing with or communicating to a patient information or opinions regarding the patient’s health care, including treatment options, other health care services, or services of the health care plan as they relate to the medical needs of the patient.
- The Commissioner of Insurance shall adopt rules to ensure reasonable accessibility and availability of preferred providers.

Amended the orthotists and prosthetics licensing act so as to prohibit anyone from providing an orthotic service (*i.e.*, fitting an orthosis) unless the person is a licensed orthotist acting under an order from a licensed physician, chiropractor, or podiatrist (Article 8920, VTCS).

**1999:** Passed S.B. 871 which provides that a preferred provider contract between an insurer/HMO and a DPM must provide that:

- (1) the podiatrist may request, and the insurer shall provide not later than the 30<sup>th</sup> day after the date of the request, a copy of the coding guidelines and payment schedules applicable to the compensation that the podiatrist will receive under the contract for services;
- (2) the insurer may not unilaterally make material retroactive revisions to the coding guidelines and payment schedules; and
- (3) the podiatrist may, practicing within the scope of the law regulating podiatry, furnish x-rays and nonprefabricated orthotics covered by the health insurance policy.

**1999:** Amended S.B. 1468 relating to physician joint negotiation authorizing podiatric physicians to participate.

**1999:** Passed H.B. 1572 authorizing DPMs, MDs and DOs to co-own professional limited liability companies, partnerships and non-profit corporations.

**1999:** Passed H.B. 1420 which provides that TSBPME may provide a copy of a consumer complaint to the license holder unless providing a copy would jeopardize an investigation.

**1999:** Passed legislation providing a 5% across-the-board increase in Medicaid provider reimbursement.

**1999:** Passed S.B. 1132 which provides that the process for considering the renewal, modification, or revocation of medical staff membership and privileges must afford each physician, podiatrist and dentist procedural due process.

**1999:** Passed S.B. 982 which mandates coverage for certain diabetes self-management training if provided on the written order of a health care practitioner.

**1999:** Passed H.B. 610 which authorizes the Commissioner of Insurance to define "*clean claim*" for prompt payment purposes. Provides that the PPO/ HMO must provide participating health care providers with copies of all applicable utilization review policies and claim processing policies or procedures, including required data elements and claim formats.

**2000:** Implemented the TPMA Hassle Factor Log and Reimbursement Assistance Program which offers assistance to TPMA members in securing the prompt payment of clean claims.

**2000:** Obtained approval from the Texas Department of Health for revisions to the training requirements for PMAs who perform radiologic procedures.

**2000:** Successfully opposed reimbursement fees proposed by Blue Cross-Blue Shield which would have discriminated against DPMs in favor of MDs and DOs.

**2001:** Passed H.B. 1862 requiring that an insurer provide verification of coverage and, once so verified, requiring payment unless the insurer notifies the provider that the patient is no longer eligible for benefits. The bill also provides that insurers must request refunds of overpayments no later than 180 days after the date of service.

**2001:** Passed S.B. 777 which authorizes the certification of disabled parking applications by DPMs.

**2001:** Passed H.B. 3152 which strengthens the due process protections for physicians, podiatrists, and dentists in hospitals.

**2001:** Passed S.B. 1024 which provides that an investigator for the TSBPME is immune from liability for official acts.

**2003:** Defeated S.B. 1395 which would have amended the Texas Podiatric Medical Practice Act so as to define the word "*foot*" as "*the portion of a lower limb situated below the ankle.*"

**2003:** Passed H.B. 1163 provides that an insurer/HMO may not withhold the designation of preferred provider to a podiatrist licensed by the Texas State Board of Podiatric Medical Examiners who joins the professional practice of a contracted preferred provider, applies to the insurer/HMO for designation as a preferred provider, and complies with the terms and conditions of eligibility to be a preferred provider.

**2003:** Passed S.B. 418 which closed the loopholes in existing laws and regulations relating to the prompt payment of health care claims by insurers.

**2003:** Passed H.B. 3, the Health Care Liability Reform Act, aka Tort Reform.

**2005:** Passed the Sunset Bill (S.B. 402) which continues the Texas State Board of Podiatric Medical Examiners in existence as an independent health care licensing agency until September 1, 2017.

**2005:** Passed S.B. 1 which restores podiatry benefits for adult Medicaid recipients.

**2005:** Successfully defeated S.B. 1688 which would have abolished the Texas State Board of Podiatric Medical Examiners and transferred the regulation of DPMs and certain other licensed health professions to the Texas Department of Health Professions Licensing, a new agency governed by 7 non health-related members appointed by the Governor.

**2006:** Successfully amended H.B. 3 which enacted the new 1% gross receipts tax so as to exclude the following payments/services from a health care provider's total taxable revenue:

- (a) payments under the Medicaid program, Medicare program, Indigent Health Care and Treatment Act (Chapter 61, Health and Safety Code), and Children's Health Insurance Program (CHIP);
- (b) payments for professional services provided in relation to a workers' compensation claim under Title 5, Labor Code;
- (c) payments for professional services provided to a beneficiary rendered under the TRICARE military health system; and
- (d) the actual cost to the health care provider for any uncompensated care provided, but only if the provider maintains records of the uncompensated care for auditing purposes and, if the provider later receives payment for all or part of that care, the provider adjusts the amount excluded for the tax year in which the payment is received.

**2007:** Passed H.B. 1, the Appropriations Bill which increased provider reimbursement rates by 25% for services provided to children as part of the *Frew v. Hawkins* lawsuit settlement.

**2007:** Defeated H.B. 2939 by Representative Callegari and S.B. 2907 by Senator Ellis which would have consolidated the health licensing agencies under a Health Professions Commission. As introduced the legislation would have decreased the autonomy/independent decision making authority of the Texas State Board of Podiatric Medical Examiners.

**2007:** Defeated H.B. 2290 by Christian which would have required any state agency adopting rules to include in its reasoned justification for the rule any written comments received from members of the Legislature and why the agency disagrees with any written comments or proposals offered by a member of the Legislature.

**2007:** Defeated S.B. 290 by Senator Nelson which would have placed costly and onerous financial and patient reporting requirements on physician/provider owned ASCs and hospitals. Publicly traded hospitals, privately-held hospitals, non-profit hospitals, etc. were excluded.

**2007:** Passed H.B. 109 by Representative Turner which adds more than 127,000 Texas children to the Children's Health Insurance Program over the next two years.

**2008:** During the early months of 2008, Medicaid denied DPM reimbursement for certain hospital codes (99221, 99222, 99223, 99231, 99232, and 99233) and skin substitutions (15004, 15005, and the 1533x, 1534x, and 1536x series of codes). On May 20, 2008, the Texas Health and Human Services Commission advised TPMA that a systems problem had been corrected and that all DPM claims for these procedure codes would be reprocessed.

**2009:** Passed SB 1, the Appropriations Bill, which includes full funding for podiatric medical services for both children and adults.

**2009:** Passed HB 4765 which increased the State franchise tax exemption from \$300,000 to \$1,000,000.

**2009:** Passed HB 806 which mandates insurance coverage for prosthetic devices, orthotic devices, and related services.

**2009:** Successfully amended HB 449 so as to provide that a person may not operate a laser or pulsed light device with the intent to treat an illness, disease, injury, or physical defect or deformity unless the person is authorized by law to treat the illness, disease, injury, or physical defect or deformity in that manner.

**2009:** Passed HB 1363 which establishes a diabetes mellitus registry pilot program.

**2009:** Supported HB 1487 which relates to the alignment of certain Medicaid procedures regarding written orders for diabetic equipment and supplies with comparable Medicare written order procedures.

**2009:** Supported HB 4341 which provides for the regulation of discount health care programs by the Texas Department of Insurance.

**2011:** Defeated legislation which would have abolished the Texas State Board of Podiatric Medical Examiners and placed the regulation of DPMs under a new consolidated umbrella health professions regulatory agency.

**2012:** Successfully defeated a rule proposed by the Texas Health and Human Services Commission which would have eliminated DPMs as DME providers for the Texas Medicaid program and limited reimbursement to a licensed orthotist or prosthetist.

**2013:** Passed SB 365 which amends the Texas Insurance Code to provide an expedited credentialing process for a podiatrist who joins a professional practice that has a current contract in force with a managed care plan.

**2013:** Successfully defeated HB 3687 which would have eliminated podiatry services under the Texas Primary Health Care Services Act.

**2013:** Successfully defeated a rule proposed by the Texas Department of State Health Services which would have eliminated podiatry services under the Texas Primary Healthcare Program.

**2013:** Successfully supported revisions to the Texas Medicaid Program which effective January 1, 2013 revised its methodology so that Medicaid will again pay Part B deductibles for dual eligible patients according to the Medicare rate for the purpose of ensuring continued access to care.

**2015:** Passed HB 7 which eliminated the \$200 annual occupations tax for DPMs, DOs, MDs, dentists, attorneys, engineers, and other professional licensees.

**2017:** In 2016 the Sunset Staff found that the Texas State Board of Podiatric Medical Examiners (*TSBPME*) struggles to carry out their mission effectively while operating as an independent state agency. Accordingly, based upon deficiencies in licensing procedures that do not follow model licensing practices and nonstandard enforcement practices that could reduce the agency's effectiveness in protecting the public, in January 2017 the Sunset Advisory Commission voted to transfer the *TSBPME* to the Texas Department of Licensing and Regulation (*TDLR*) effective September 1, 2017. TPMA supported the move to *TDLR* because the administrative benefits associated with the recommended consolidation would make the agency more efficient and effective in accomplishing its mission. Additionally, at TPMA's request, the *TSBPME* Sunset Bill was amended to include the following important additions:

- The *TSBPME* would be reconstructed as a governor-appointed Podiatric Medical Examiners Advisory Board at *TDLR*; and
- The Podiatric Medical Examiners Advisory Board would have exclusive authority to draft and propose new rules relating to the scope of practice or health-related standard of care for podiatry to the *TDLR* Commission of Licensing and Regulation for final adoption.

**2019:** Passed HB 2847 the purpose of this legislation was to clarify that (1) persons who perform podiatric radiologic procedures at the direction of a podiatrist are regulated by *TDLR* and (2) podiatrists are authorized to delegate certain podiatric medical acts to a qualified and properly trained podiatric medical assistant. Additionally, HB 2849 included

a provision which provides immunity from liability for podiatrists retained as expert reviewers by TDLR to review complaints filed against DPM licensees.

**2021:** Passed HB 2509 allowing accredited Doctor of Podiatric Medicine Degree Programs to qualify for Graduate Medical Education, which provides funding for residency training alongside MD's and DO's.

**2021:** Passed SB 1 to include funding to open a School of Podiatric Medicine at the University of Texas Rio Grande Valley.

**BE PRO-ACTIVE:**

**KEEP PODIATRY'S HAND IN THE LEGISLATIVE ACTION**

**AND OUR FOOT IN THE DOOR!**