

House Panel Approves BBA Bill; Engel Fights for NY's Medicaid Program

Last week, there were two significant developments in the ongoing effort to secure relief for hospitals and continuing care providers from the cuts contained in the Balanced Budget Act of 1997 (BBA). GOP Leaders: First, on September 25, 2000, House Speaker Dennis Hastert (R-IL) and Senate Majority Leader Trent Lott (R-MS) sent a joint letter to President Clinton proposing "that an additional \$21 billion be spent over the next five years to provide relief to Medicare providers, especially those that can ensure that Medicare plans that currently provide drug coverage to seniors continue to do so and expand their coverage to others.... We firmly believe this can and must be acted upon before we adjourn." The \$21 billion figure cited by the Congressional leaders is the same amount of BBA relief proposed by President Clinton earlier this year. The president proposed over \$9 billion in specific one-year relief for hospitals, teaching hospitals, disproportionate share hospitals (DSH), skilled nursing facilities (SNFs), and home health providers, and left the remaining \$11 billion open for Congressional negotiations. In their letter, Speaker Hastert and Senator Lott signaled that they would spend a good portion of the remaining \$11 billion on proposals to stem the tide of Medicare HMO exits from the Medicare marketplace. Unfortunately, neither the President nor Congressional leaders have proposed enough relief to ensure

that GNYHA's top priorities are enacted and provide more resources for Medicare HMOs. These priorities include permanent, full market basket updates for hospitals and continuing care providers; permanent relief from further cuts to teaching and DSH hospitals; a capital transition provision for SNFs; relief from further Medicaid DSH cuts; and the repeal of the restrictions on the ability of legal immigrants to gain Medicaid and other publicly sponsored health insurance coverage. GNYHA has therefore stepped up its considerable advocacy activities, including the sponsorship of advertisements through the Coalition to Protect America's Health Care. Commerce Committee: The second development was the House Commerce Committee's approval on September 26 of a \$21 billion bipartisan BBA relief bill entitled "The Beneficiary Improvement and Protection Act of 2000." Because the Commerce Committee

has jurisdiction over only Medicare Part B and the Medicaid programs, the hospital and SNF communities' top Medicare Part A priorities are not contained in the final bill. The bill does, however, include a gradual softening of the BBA cut in reimbursements for Medicare bad debts; a three-year moratorium on SNF Part B consolidated billing requirements through October 1, 2003; a further one-year extension of the moratorium on physical, occupational, and speech therapy caps; a further one-year delay in the 15% rate reduction for home health services; the elimination of further cuts to statewide Medicaid DSH allotments; the creation of an option for states to cover immigrant pregnant women and children under Medicaid and the State Children's Health Insurance Program (SCHIP) after the immigrant has lived in the United States legally for at

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Medicare Provider-Based Regulations Delayed

The U.S. Health Care Financing Administration (HCFA) is delaying implementation of new regulations governing which hospital sites and departments are permitted to be reimbursed as hospital-based. The provider-based regulations, promulgated as part of the Outpatient Prospective Payment System, were to have been effective on October 10, 2000, but due to the number of

questions raised about their scope and how they would be applied, HCFA will delay effectiveness until January 10, 2001. The requirements for coming into compliance with the regulations will be phased in over a 12-month period, with some hospitals affected in 2001 and some affected as of 2002. GNYHA will continue to work with HCFA to address issues of most concern to member institutions. ■

GNYHA Board Meets

The GNYHA Board of Governors met on September 28, 2000, and took the following actions:

- approved an application for Institutional Membership by Southampton Hospital and an application for Associate Membership by Palisades Medical Center (of the New York Presbyterian Healthcare System);
- heard a report on GNYHA's continued advocacy efforts for its members at the Federal level, including the latest Congressional proposals to secure relief for hospitals and continuing care providers from the damaging effects of the Balanced Budget Act of 1997 (BBA) and the latest phase of the national media campaign to secure additional BBA relief by the Coalition to Protect America's Health Care; an update on GNYHA's continued effort to prevent large cuts in Federal Medicaid funding for New York through changes in Federal Upper Payment Limit Regulations; and GNYHA's efforts to ensure that funds are appropriately allocated for staff recruitment, retention, and training for New York's not-for-profit nursing homes, as well as to secure fiscal relief for New York nursing homes with high capital costs;
- was updated on GNYHA's initiatives to secure significant payer reform, including a collaborative relationship with Aetna and ongoing discussions with other payers;
- heard a presentation on GNYHA's work to address members' cash flow and capital formation concerns, including Medicare Outpatient Prospective Payment System implementation, special New York State payments (including Community Health Care Conversion Demonstration Project funds and Graduate Medical Education Incentive Pool funds), and a follow-up to GNYHA's recent Capital Formation Symposium;
- heard an overview of the methodology used to determine the *U.S. News and World Report* hospital rankings, and the studies GNYHA has undertaken to critique the rankings, and approved the formation of an Outcomes Research Committee to oversee GNYHA's research agenda regarding differences between New York and other health care markets;
- was briefed on GNYHA's initiatives regarding quality of care and human subjects research, aimed at reducing medical errors and improving compliance with requirements for the protection of human subjects in research;
- had a discussion of the worsening nursing shortage and discussed possible solutions;
- was briefed on the recently enacted revisions to part-time clinic regulations; and
- heard a financial report for GNYHA and its subsidiaries for the period ending June 30, 2000. ■

SHRPC Codes Committee Adopts Revised Part-time Clinic Regulations

At its September 21, 2000, meeting, the New York State Hospital Review and Planning Council (SHRPC) Codes and Regulations Committee voted to recommend the adoption of revisions to the part-time clinic regulations that were adopted on an emergency basis at SHRPC's August 3, 2000, meeting and that became effective on August 15, 2000. The new regulations prohibit part-time clinics from being operated in certain locations (including private physicians' offices) and require that they be operated in proximity to the sponsoring facility's main site. The proposed changes would permit part-time clinics to be operated in private physicians' offices if the office space is leased for a defined period of time and used on a regular basis to provide low-risk services. The proposed revisions also clarify that appeals of disapprovals of part-time clinic applications would be made to SHRPC.

GNYHA Comments: GNYHA had provided extensive comments to SHRPC prior to the

adoption of the regulations in August. At the September 21, 2000, SHRPC Codes and Regulations Committee meeting, GNYHA commented in support of the proposed regulatory revisions that would permit part-time clinics to be operated in private physicians' offices. GNYHA also commented that the prohibition on operating part-time clinics in certain other locations (for example, adult homes and intermediate care facilities) should also be removed and that part-time clinics that are dually licensed by the NYS Department of Health and other agencies should be permitted to continue to operate. In addition, GNYHA commented that the list of acceptable services put forth in the regulations should not be considered all-inclusive, but examples of appropriate services.

New Prior Approval Process: The regulations also establish a new prior approval process by which all existing and proposed clinics are approved to provide services. Future operators are required to submit

GNYHA Responds to White House Nursing Home Initiative

In response to the announcement of the President's Nursing Home Quality Initiative, unveiled during a national radio address on September 16, 2000, GNYHA has written two letters to the White House highlighting the Association's concerns and priorities. The centerpiece of the initiative is the proposed creation of a \$1 billion grant program designed to assist facilities in increasing staffing levels, improving recruitment and retention of staff, and providing additional training to direct caregivers. Under the plan, at least 75% of these new funds would be awarded to states with the lowest relative staffing levels. In both letters to the White House, GNYHA stressed that the Administration should ensure that the funding is allocated in a way that does not disadvantage states such as New York, which, as a result of having large numbers of not-for-profit nursing homes, are likely to have staffing levels higher than those found in other states. Further, GNYHA urged the White House to target the new funding to those facilities with the greatest demonstrated financial need. Finally, GNYHA took the opportunity to urge the White House to become actively involved in seeking fiscal relief for nursing homes with high capital costs, arguing that the dramatic shortfall in capital payments under the Medicare skilled nursing facility prospective payment system for many facilities presents a significant barrier to investments in additional direct care staff. ■

applications at least 45 days prior to opening the site. In order to continue operating, current operators are required to submit applications to DOH by November 13, 2000. **Member Briefing:** GNYHA is holding a member briefing session on the regulations on October 13, 2000; call Barbara Marino at GNYHA to register. If you have any questions about the regulations, the application process, or the briefing, please call Doris R. Varlese at GNYHA. ■

least two years; a variety of Medicare+Choice provisions including a minimum 3% premium update for Medicare+Choice plans and a variety of measures to encourage the entry of Medicare+Choice plans into rural areas; the elimination of the Medicare inflation factor cut for ambulance services in FY 2001 and FY 2002; and the imposition of a new prospective payment system for federally qualified health centers in 2001. The bill also eliminates the time limitation on Medicare benefits for drugs following an organ transplant, expands the areas eligible for Medicare reimbursement for telemedicine services (similar to videoconferencing), permits Medicaid beneficiaries to elect to return to the SNF in which they resided prior to a hospitalization, gives states the option to allow more entities to determine presumptive eligibility for Medicaid and SCHIP, simplifies the process to enable low-income Medicare beneficiaries to apply for assistance to pay copayments and deductibles, and extends the Welfare to Work Medicaid transition program by one year. The Commerce Committee bill also contains a provision that would limit the amount of funds reallocated among states under the SCHIP program. Under current law, the Federal government is required to reallocate funds from states that have not spent all of their SCHIP funds for FY 1998 to the nine states that have. New York is one of the nine states that has spent all of its FY 1998 allotment. Under the Commerce Committee provision, only 40% of the \$1.9 billion that has not been spent would be reallocated to states such as NY over the next two years.

Engel and Medicaid: During the Commerce Committee deliberations, Congressman Eliot Engel (D-NY) offered an amendment that would have prevented the U.S. Health Care Financing Administration (HCFA) from promulgating new regulations that would hamper the ability of some states, including NY, to draw down Federal Medicaid funds through a change in the way the Federal government calculates so-called Medicare upper payment limits. Governor Pataki, GNYHA, and members of the NY Congressional Delegation have been concerned that new regulations, if not properly

drafted, could cost NYS and its counties nearly \$500 million in Federal Medicaid funding. Congressmen Jim Greenwood (R-PA) and Bobby Rush (D-IL) offered similar amendments, but all amendments were withdrawn due to opposition from the bipartisan leadership of the Commerce Commit-

tee. GNYHA is grateful to Congressman Engel for his advocacy, and continues to work closely with him, Governor Pataki, Clinton Administration officials, and other members of the New York Congressional Delegation to ensure that New York does not lose critical Medicaid funding. ■

HUD Initiatives to Provide Health Care Capital and Financing Options

On September 21, 2000, at GNYHA's symposium on capital formation, Andrew M. Cuomo, Secretary of the U.S. Department of Housing and Urban Development (HUD), announced two significant initiatives that will free up capital for many New York hospitals as well as facilitate refinancings across the country, resulting in substantial interest savings for providers. Other speakers at the symposium included William C. Apgar, Commissioner of HUD's Federal Housing Administration (FHA); Spencer Foreman, M.D., President of Montefiore Medical Center; and David Rosen, President and Chief Executive Officer of Jamaica Hospital Medical Center.

Release of Excess DRF Funds: The first initiative permits hospitals participating in HUD's FHA mortgage insurance program and meeting certain good-standing criteria to obtain release of any funds held in their FHA depreciation reserve funds (DRFs) in excess of an amount equal to two times their annual mortgage payments. HUD estimates that this change in policy will permit hospitals to obtain a one-time release of \$165 million for capital projects approved by HUD in addition to reducing future funding requirements. HUD's new policy is premised on its experience that a two-year reserve is sufficient to protect the FHA program, particularly in the case of a "financially challenged but fundamentally sound hospital." In addition, in making the change, HUD noted that one of the purposes of the DRF was to require hospitals to put aside the relatively large payments they had historically been receiving from payers under old capital reimbursement systems for depreciation during the early years of a loan,

in order to help them make the mortgage payments that are due later in the term of the loan, when nonreimbursable principal payments typically exceed reimbursable depreciation. HUD's revised policy, therefore, also recognizes the elimination of capital reimbursement by many payers. All hospitals participating in the FHA program will receive letters from HUD explaining the revised policy and the mechanism for securing release of excess funds. Hospitals not yet meeting the two-times debt service test will receive a revised funding schedule that takes into account the reduced funding levels.

New HUD Refinancing Program: The second initiative may have less applicability in NY but will provide savings to hospitals across the country. Referred to as the 223(f) program, it permits HUD to insure mortgage refinancings for hospitals not currently participating in the FHA program, which will result in significant interest savings for those hospitals that decide to refinance. HUD estimates that approximately 230 hospitals would refinance under this program, thereby generating interest savings of \$850 million over five years.

Secretary's Commitment to Health Care: Secretary Cuomo's announcement underscored the importance of health care facilities as valued community assets as well as local economic engines. As a result, Secretary Cuomo stated that HUD's most significant goal—community development—hinges on the long-term health of America's hospitals, and he confirmed HUD's commitment to work with New York's health care community to provide capital to ensure that providers can meet the needs of their communities. ■

GNYHA Makes Recommendations on Restructuring HCRA GME Incentive Pool

On September 22, 2000, GNYHA wrote to Antonia Novello, M.D., Commissioner of the New York State Department of Health (DOH), regarding revisions to the Professional Educational Supplemental Pool, commonly known as the graduate medical education (GME) incentive pool. The GME incentive pool, which was initially authorized in the Health Care Reform Act (HCRA) of 1996, was continued in a modified version in HCRA 2000. GNYHA stated in its letter that after three years of implementation of the HCRA 1996 GME incentive pool, the reauthorization and modification contained in HCRA 2000 offers DOH an opportunity to retain the best parts of the incentive pool program and modify or eliminate those components that have proved administratively and programmatically difficult for both teaching institutions and DOH staff.

GNYHA noted in its letter that only two years of GME incentive pool payments have been distributed at this point, and none of the third-year awards (that is, those attributable to 1999 pool collections) is currently scheduled to be distributed before some time in the next few months. This distribution schedule will coincide with the completion of the State's collection of the fourth year of GME private payer pool contributions, which make up the funding source of the GME incentive pool. GNYHA expressed

general concern that available State pool dollars, whether from the GME incentive pool or the Community Health Care Conversion Demonstration Project, have lagged in their distribution to eligible hospitals.

GNYHA's Recommendations: In its letter, GNYHA offered both administrative and programmatic recommendations for restructuring the incentive pool. In the administrative area, GNYHA recommended that DOH staff make a concerted effort to ensure that the survey distribution, collection, and funding process take no more than six months in total and be completed by the early fall, and that DOH implement an interim payment provision for some significant portion of each hospital's total award. In addition, GNYHA encouraged DOH to avoid significant and

burdensome new data collection requirements in restructuring the incentive pool.

In addition to making specific recommendations regarding individual elements of the programmatic design of the HCRA 2000 GME incentive pool, GNYHA also made two general recommendations. First, the weight associated with the quality indicator should be maintained and the remaining objectives should be weighted equally, or about equally, and no particular policy objectives and associated weights should be separately carved out. In addition, GNYHA recommended that each of the policy objectives have two separate reward components—one reflecting achievement of or maintenance of a minimum threshold goal, and the other reflecting incremental further achievement toward a higher-level goal. ■

Increased Federal Oversight of Human Subjects Research Is Focus of GNYHA Briefing

On September 22, 2000, GNYHA held a briefing for its members on the recent reorganization of the Federal Office of Protection from Research Risks (OPRR), within the U.S. Department of Health and Human Services, and on key issues that are part of a major new Federal initiative to increase oversight of human subjects research. In May 2000, President Clinton announced that the Federal government would strengthen oversight of human subjects research in several areas, including training for investigators, monitoring of clinical trials, and policies on conflicts of interest in research. Nancy Dubler, Director of the Division of Bioethics at Montefiore Medical Center and Co-chair of the Federal committee that recommended the reorganiza-

tion of OPRR, spoke at the briefing. She discussed recent Federal enforcement actions to close research programs at major medical centers, including Duke and Penn University hospitals. She also examined the new Office of Human Subject Protections and the heightened focus on conflicts of interest in research as a result of the increased collaboration between academic medical centers and private industry, and the intense media scrutiny of this issue. As requested by participants at the briefing, GNYHA's focus at future briefings will be on legal requirements regarding conflicts of interest and model institutional policies. GNYHA has previously provided briefings for members on Federal regulations, compliance, and billing practices in this area. ■

AROUND

The Executive Committee of the Board of Trustees of Mount Sinai NYU Health have named **Barry R. Freedman** Acting President and Chief Executive Officer of Mount Sinai NYU Health. Mr. Freedman is currently President of The Mount Sinai Hospital and Executive Vice President and Chief Operating Officer of Mount Sinai NYU Health. • **Theresa Bischoff**, the current President of NYU Hospitals Center and Executive Vice President of Mount Sinai NYU Health, has been named Acting Chief Operating Officer of Mount Sinai NYU Health. • **Celeste M. Johnson** has been appointed Regional Director of the New York State Department of Health's (DOH's) Metropolitan Regional Office in New York City. Prior to taking this leadership position at DOH, she served as GNYHA's Director of Government and Community Affairs. In the mid-1990s Ms. Johnson was the President of Johnson, Lane Associates, a consulting firm to health and human service agencies in Boston. She also served as Chief of Staff to the Commissioner of the Boston Department of Health and Hospitals for more than six years. ■