

Congress, White House Begin BBA Negotiations

Late last week, President Clinton and Congressional leaders prepared themselves for negotiations over a bill to provide relief from the cuts in the Balanced Budget Act of 1997 (BBA) for hospitals, nursing homes, home health care providers, and Medicare managed care plans. During the week, both sides staked out positions, with President Clinton backing a package that would provide more relief for teaching hospitals, nursing homes, and home health providers, and Congressional leaders backing a package that provides much more than the President wants for Medicare HMOs. On October 11, 2000, Congressional Republicans settled on a package that would provide approximately \$28 billion in Medicare and Medicaid changes over five years. As *Skyline News* went to press, the Congressional GOP plan had not yet been released; however, through conversations with officials on Capitol Hill and in the White House, GNYHA learned that the GOP plan contains the following provisions.

Hospitals: For teaching hospitals, there would be a one-year postponement in further cuts to the Medicare indirect medical education (IME) adjustment, and a lesser cut than scheduled in 2002. Specifically, the IME adjustment would remain at 6.5% in 2001, would be reduced to 6.375% in 2002, and would be cut to 5.5% in 2003. This is less than contained in the Senate Finance Com-

mittee proposal, and much less than provided by bills sponsored by Senator Daniel Patrick Moynihan and Congressman Charles Rangel. The plan would also increase the floor on the per resident amount used to calculate Medicare direct graduate medical education (GME) payments from 70% to 85%. In addition, the Congressional plan would provide for a full market basket update for hospitals in 2001, and an update of market basket minus 0.55% in 2002 and 2003—again, a retreat from the Senate Finance plan, which would have provided no market basket cuts in 2001 and 2002, and a cut of mar-

ket basket minus 1% in 2003. The plan would also eliminate the 3% Medicare disproportionate share hospital (DSH) cut in 2001 and would allow hospitals to gain reimbursement for 70% of bad debt costs, rather than 55%, as under current law.

Continuing Care: For skilled nursing facilities (SNFs), the Congressional plan would provide a full market basket update in 2001, with market basket reductions of 0.55% in both 2002 and 2003. This provision is not nearly as generous as that in the Senate Finance proposal, which would have provided market basket plus 1% in 2001 and 2002. The proposal would also provide a 10% increase in the nursing component of the SNF prospective payment system (PPS) rates for the period April 1, 2001–October 1, 2002. An audit would then be conducted to deter-

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HCFA Proposes Rule Aimed at Curtailing Medicaid “Loophole”; Outcome Unclear

On October 10, 2000, the U.S. Health Care Financing Administration (HCFA) issued a proposed rule aimed at curtailing what it has called a loophole in Medicaid financing rules. Using so-called inter-governmental transfers (IGTs) that result in higher Federal Medicaid payments to local government hospitals and nursing homes, many states have effectively increased their share of Federal funding. Some states have used such Medicaid funds for non-health care purposes such as road

construction and local tax cuts. New York, whose financing program has been repeatedly approved by HCFA, has used the \$500 million generated by its system exclusively to support health care programs for low-income populations. Under HCFA's proposed rule, Medicaid would cap its payments to local government hospitals and nursing homes in a way that would eliminate the ability of New York and other states to continue the financing programs in effect today. However, the proposed rule would

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also provide states with a two- to five-year transition period to adapt to the new rules, and permit supplemental payments to be made to public hospitals in recognition of the role they play as providers of last resort.

Separately, the Clinton Administration has announced its support for legislative changes that would permit higher payments to be made to public hospitals for their disproportionate share hospital (DSH) costs, the unpaid costs of caring for uninsured and other low-income patients. While important details have yet to be clarified,

including which transition period would apply to New York, it appears that the combination of these approaches would protect New York's health care safety net. It is not clear how or whether the regulatory and legislative proposals will be adopted, however, because of disagreement in Congress on the appropriate approach to be taken. On the one hand, House Speaker Dennis Hastert has proposed that the HCFA regulation be postponed, and on the other, Senate Finance Committee Chairman William Roth, who has been highly critical of these

payment arrangements, favors eliminating such arrangements completely within two years. GNYHA continues to support the solutions proposed by the Administration as the most protective of New York's health care system, and is working with Governor Pataki, New York's Senators Daniel Patrick Moynihan and Charles Schumer, and New York's bipartisan House delegation including Congressmen Charles Rangel, Rick Lazio, Vito Fossella, Eliot Engel, and Ed Towns to ensure passage of the legislation necessary to protect New York. ■

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nant women and children in Medicaid and the State Children's Health Insurance Program. The bill does freeze, but for only one year, reductions in statewide Medicaid DSH allotments, which were included in the BBA. **GNYHA Response:** In conversations with White House staff last week, GNYHA learned that President Clinton has threatened to veto the Congressional GOP plan because it does not contain enough relief for teaching and DSH hospitals and continuing care providers, and does not contain the Medicaid language needed to protect New York's Medicaid program from new cuts due to the new U.S. Health Care Financing Administration regulations. GNYHA has expressed its deep disappointment in the plan to the New York delegation, and has urged them to work with Congressional leaders and the White House to improve the plan. In response, Senator Moynihan has been working with Senator William Roth, Chairman of the Senate Finance Committee, and Senator Schumer has spoken personally with President Clinton to encourage him to make sure that GNYHA's priorities are included in a compromise plan. GOP members of the New York delegation are working with House leaders, Democrats with the White House. The President's veto threat ensures that the President and his staff will now sit down with Congressional Republicans to craft a compromise plan. GNYHA will continue to work with the White House and our bipartisan Congressional delegation to ensure that as much BBA relief is provided to GNYHA members as possible. ■

Fiscal Impact of Discussed GOP Provisions on NYC Hospitals and Nursing Homes

Provision	2001	2001-05
HOSPITALS (\$ in millions)		
Inpatient PPS:		
Update: MB in 2001; MB-.55% in 2002 and 2003	\$34.6	\$198.7
IME: 6.5% in 2001; 6.375% in 2002; 5.5% in 2003	21.1	100.8
DSH: No cut in 2001	16.3	16.3
Total	72.0	315.8
Direct GME: PRA floor at 85%	1.3	7.1
Bad debt: coverage at 70%	5.8	31.3
Total	79.2	354.2
NURSING HOMES (actual \$ amounts)		
Update: MB in 2001; MB-.55% in 2002 and 2003		
Average per day	\$3.60	\$18.30
Average per facility	48,700.00	246,300.00
10% add-on to nursing component from 4/1/01 to 10/1/02		
Average per day	15.10	29.40
Average per facility	203,000.00	396,500.00
Total		
Average per day	18.70	47.70
Average per facility	251,700.00	642,800.00

Notes: MB = market basket; IME = indirect medical education; DSH = disproportionate share hospital; PRA = per resident amount. Numbers may not total due to rounding.

mine whether this additional funding helped increase staffing. The proposal would also limit consolidated billing requirements to Part B services provided pursuant to a Part A covered stay and to therapy services furnished in Part A and Part B covered stays. For home health providers, the proposal would provide a full market basket update in 2001, and would postpone the scheduled 15% cut in home health PPS rates for an additional year.

Medicaid, SCHIP Issues: The Congressional GOP plan does not contain two Medicaid proposals of importance to New York. First, it does not include legislation to ensure that New York will be able to continue to gain access to critical Federal Medicaid funding under new regulations (see story on page 1). Second, it does not include a state option, approved by the Commerce Committee, to allow states to enroll legal immigrant preg-

City Planning Department Modifies Zoning Proposal

At a GNYHA member briefing held on October 2, representatives of the NYC Planning Department announced a modification to the City's proposal to overhaul its zoning laws that is designed to address the concerns that GNYHA has put forward on behalf of its members. The modification, referred to as the "campus rule," would permit health care facilities and their related education and research buildings greater latitude under the proposal, thereby eliminating some of the most significant problems that the proposal might create for GNYHA members.

The underlying proposal, known as the Unified Bulk Program, is intended to simplify and clarify the City's zoning requirements and represents the first comprehensive reform

of the City's zoning resolution in 40 years. However, the proposal would impose new height limits and setback controls that may have a disparate negative impact on health care, education, and research facilities because of their greater floor-to-floor heights and smaller footprints relative to other buildings. In addition, health care facilities' financial constraints require them to use their available property to the maximum extent possible rather than acquiring additional parcels.

GNYHA, accompanied by members, has met with the City Planning Department several times and has testified before the City Planning Commission to request modifications to the proposal in order to mitigate the disparate impact. In response to these meet-

ings as well as concerns raised by other "community facilities," the Planning Department has put forward the "campus rule," which, in general terms, allows community facilities located on contiguous three acres (permitting streets to intervene) more flexibility in their height limits on the theory that facilities that occupy a campus have defined the character of their neighborhood, and therefore the basic height limits may be exceeded.

GNYHA's October 2 briefing was designed to familiarize its members with the proposal and to enable them to provide input to the City Planning Department. GNYHA will continue to monitor the proposal, and seeks members' input regarding potential problems created by the proposal. ■

SHRPC Adopts Revisions to Part-time Clinic Regulations

At its October 5, 2000, meeting, the State Hospital Review and Planning Council (SHRPC) voted to adopt revisions to the part-time clinic regulations that had become effective on August 15, 2000. The new regulations prohibit part-time clinics from being operated in certain locations and require that they be operated in proximity to the sponsoring facility's main site. The changes that were adopted on October 5, 2000, 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. Additionally, the revised regulations require operators of part-time clinics to submit a closure plan that is acceptable to the department 15 days prior to closure of the site. The revisions also require part-time clinics to receive approval from the New York State Department of Health (DOH) prior to changing any category of services.

Part-time Clinic Application: The regulations establish a new process for prior approval by which all clinics, both existing and proposed, are approved to provide part-time clinic services. Future operators are required to submit applications at least 45 days prior to opening a site. In order to con-

tinue operating, current operators are required to submit applications to DOH by November 13, 2000. If provider applications are not approved by DOH, applicants will have the ability to appeal to SHRPC prior to final disapproval of the application. *DOH has indicated that as long as current operators submit applications by November 13, 2000, they may continue to operate until final disapproval.* The new part-time clinic application is now available on the DOH Web site at <http://www.health.state.ny.us/nysdoh/cons/main.htm>. To access the application, click on the "part-time clinic application form" link.

Project Amendment Regulation Revision: At its October 5, 2000, meeting SHRPC also voted to adopt regulations revising the criteria that define amendments to previously approved certificates of need (CONs). The revised regulations change the dollar criterion for what would constitute an amendment requiring SHRPC review from \$500,000 to \$3,000,000. The revised regulations also eliminate the provision that changes in ownership of land or buildings constitute amendments to CON applications requiring review by SHRPC. Changes in such ownership would still require prior approval by the Commissioner of Health. The regulations will become effective upon publication of a Notice of Adoption in the *State Register*. ■

Bill to Increase Number of Foreign Workers Awaits President's Signature

Congress has approved the "American Competitiveness in the Twenty-First Century Act of 2000" (S.2045), sponsored by Senator Orrin Hatch (R-UT). The bill increases the number of H1-B visas available to nonimmigrant aliens from 115,000 to 195,000 per year for fiscal years 2001-2003. President Clinton is expected to sign the bill.

The bill is primarily intended to ease the shortage of workers in the technology industry. However, the H1-B visa increase provides an opportunity for hospitals to recruit foreign-trained workers to fill positions that require a four-year degree such as dietitians, physical therapists, and researchers. While not a long-term solution, S.2045 will help health care providers that have had difficulty recruiting qualified health care workers in the United States to recruit high-quality employees from other countries. H1-B visas are expected to generate \$450 million over three years, to be used for scholarships, training, and K-12 education programs.

GNYHA will host a briefing on immigrant employment issues on November 6, 2000. Notice of the briefing will be mailed shortly. ■

Governor Pataki Signs Patient Health Information and Quality Improvement Act

On October 6, Governor Pataki signed the Patient Health Information and Quality Improvement Act, which calls for the NYS Department of Health (DOH) to develop and make available individual physician profiles, hospital report cards, and health care plan data. The Act also establishes a "Patient Safety Center" for reducing medical errors and improving the quality of health care, and modifies hospital incident reporting and professional misconduct reporting procedures.

DOH will work first on the physician profiling component, which will include information such as medical schools attended; hospitals where physicians have admitting privileges; certain criminal convictions within the last 10 years; actions taken against the physi-

cian for professional misconduct; limitations on practice; loss or restrictions of privileges; the number of medical malpractice judgments and awards; and malpractice settlements involving payments if the number of settlements exceeds two or the DOH Commissioner determines the settlement is relevant to patient decision-making regarding quality of care. Hospital report cards will include utilization and performance information to promote quality-improvement activities, statewide performance data comparing utilization measures, and other data.

GNYHA anticipates working with DOH as implementation begins, and will seek member input regarding profiling, report cards, and the Patient Safety Center. ■

Delivery of Flu Vaccine Delayed; Departments of Health Offer Guidance to Providers

GNYHA has been working closely with both the New York State Department of Health (DOH) and the New York City Department of Health (NYCDOH) in an effort to plan for projected delays in the availability of this season's influenza vaccine. According to the U.S. Centers for Disease Control (CDC), providers will likely receive a substantial amount of vaccine later than usual this year, although it is expected that the total amount of vaccine supplied this year should approximately equal the amount distributed last year. To aid DOH and NYCDOH in assessing the impact of delays by manufacturers on fulfilling vaccine orders, GNYHA has begun collecting information on the status of shipments to certain providers serving high-risk populations (for example, member long-term care facilities) and relaying this information to the key health department officials. In turn, DOH and NYCDOH are in the process of jointly sending out information that offers guidance to providers for dealing with any temporary vaccine shortages. This guidance will stress that providers should develop contingency plans to ensure that individuals who are at highest risk of experiencing complications from influenza

are vaccinated first. According to DOH, priority should be given to vaccinating individuals in the following high-risk categories:

- those aged 65 and older;
- residents of nursing homes;
- adults and children (6 months and older) with chronic disease of the pulmonary or cardiovascular systems (including asthma);
- adults and children (6 months and older) who receive regular medical care or have been hospitalized in the last year because of chronic metabolic diseases;
- children 6 months–18 years of age receiving long-term aspirin therapy;
- healthy pregnant women in their second or third trimester during influenza season and pregnant women with medical conditions that increase their risk of complications of influenza; and
- direct health care workers and other employees of hospitals, clinics, nursing homes, chronic care facilities, and assisted living residences.

Members seeking information regarding the availability of vaccine for purchase can obtain such information on the Internet at www.flu.state.ny.us. Additional information can be obtained on the CDC Web site at www.cdc.gov. ■

Upcoming GNYHA Briefings: Cultural Competence Issues

All briefings listed below will be held at the GNYHA Conference Center, 555 West 57th Street, 15th Floor. To register, please contact Barbara Marino at GNYHA.

Cross-Cultural Issues in Residency Training

Date: *Thursday, October 19, 2000*

Time: *9:00 a.m.–11:00 a.m.*

Joseph Betancourt, M.D. and Alexander Green, M.D., both of the Department of Internal Medicine, New York Presbyterian Hospital-Weill Medical College of Cornell University, will discuss approaches and techniques for incorporating cross-cultural issues into residency training. For more information, please contact Tim Johnson at GNYHA.

End-of-Life Care in a Cultural Context

Date: *Tuesday, November 7, 2000*

Time: *8:00 a.m.–12:00 noon*

This seminar from GNYHA's Center for Continuing Care, will address barriers to quality end-of-life care that may exist for ethnic and religious minorities; the relationship between advance directives and ethnicity; building cultural sensitivity in a hospice setting; communication between families, staff, and nursing home residents; the impact of cultural awareness on organ donation; and staff training in cultural sensitivity at the end of life. The symposium is designed for administrators, directors of nursing, directors of quality assurance, and other managers and clinicians involved with quality initiatives. For more information, contact Roxanne Tena-Nelson at GNYHA.

Best Practices in Advancing Cultural Competence

Date: *Tuesday, November 7, 2000*

Time: *2:00 p.m.–4:30 p.m.*

Julia Puebla Fortier, nationally recognized expert on culturally competent care, will discuss alternatives and strategies for increasing cultural competence in health care facilities. Leonard Aubrey, President and CEO of NYU Downtown Hospital, will discuss his facility's initiatives to meet the needs of Asian and other populations.

Patients with Limited English Proficiency and Hearing Impairments

Date: *Wednesday, December 6, 2000*

Time: *10:00 a.m.–12:30 p.m.*

Thomas Perez, Director of the Federal Office for Civil Rights (OCR) for the U.S. Department of Health and Human Services, will discuss requirements in a recent OCR guidance letter on language assistance for people with limited English proficiency. Presentations will also be given on a service being developed to provide centralized remote simultaneous medical interpretation as well as provider initiatives to address the needs of the hearing-impaired. ■