Medicare Fees Reduction - A Problem for Patients As Well As Physicians

By Barry B. Perlman, M.D. and Seth P. Stein, Esq.

Once again physicians are facing a substantial reduction in Medicare fees for 2008. The Medicare conversion factor for 2008 will decrease by 10% unless Congress once again takes action to prevent this reduction. Last year, Congress averted a 5% decrease for 2007, but granted no increase in the Medicare conversion factor. At the same time, Congress mandated that the entire 5% decrease mandated for 2007 should be implemented in 2008 in addition to the 5% decrease mandated for 2008. The culprit is the Medicare Sustainable Growth Rate (SGR) formula used to update the Medicare conversion factor. The SGR was enacted precisely to prevent Medicare fee decreases due to increases in the Medical Economic Index (MEI).

Every fall for the past several years, Congress debates whether the automatically mandated decreases in Medicare Part B conversion factor will take effect. Each year Congress has acted at the last moment, or even after the new calendar year had begun, to avert the mandated reductions and sometimes grant a small increase that is much less than the increase in the cost of living. For 2007, Congress granted no increase at all. Although it is quite clear why psychiatrists and other physicians are concerned about the continual and steady erosion in Medicare Part B fees, this issue should be of equal concern for patients covered by Medicare Part B and their families. Patients who are enrolled in the Medicare program should be rightfully concerned about having adequate access to psychiatrists and other mental health professionals in the years to come. The impact of Medicare fee reductions will inevitably adversely impact access to care for both the aged and those under 65 years of age with disabilities, including those suffering with serious and persistent mental illness, who are enrolled in the Medicare program.

The problem of Medicare fee reductions will also exacerbate the already recognized need for geriatricians and general psychiatrists at a time when the population is rapidly aging with the enrollment in Medicare of the “baby boom” generation, rapidly approaching. Demographic data and projections make the trend clear. In 2010, 12.4% of the population was over 65 years of age. That percentage is expected to increase to 20% by 2025 and even then will not have reached its peak. This data explains the basis of the call by national political and health-care leaders for more doctors, including psychiatrists, at a time when the population is rapidly aging and other physicians are concerned about the continual and steady erosion in Medicare Part B fees.
THE BULLETIN
NEW YORK STATE PSYCHIATRIC ASSOCIATION

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Information for Contributors

The Bulletin welcomes articles and letters that NYSPA members will find timely, relevant and compelling. Articles should be between 750 and 1500 words (three to five double-spaced manuscript pages) and letters no more than 750 words. All submissions must be made electronically, preferably by email to the editor. All authors are encouraged to also provide a photograph of themselves which will be printed alongside their article.

Information for Advertisers

The Bulletin welcomes advertisement from both NYSPA members and commercial enterprises. Total circulation averages 5,500 copies per issue. The Bulletin is delivered to members of the American Psychiatric Association who belong to a district branch in New York State. The Bulletin is also sent to the leadership of other district branches across the United States and to New York State legislators, medical libraries, and science writers. The Bulletin is published quarterly. Both classified advertisements and display advertisements are available. Please contact the editor for current rates and media requirements. NYSPA members receive a discount of 50% off the basic classified ad rate.

The opinions expressed in the article or letters are the sole responsibili- ties of the individual author and may not necessarily represent the views of NYSPA, its members, or its officers.

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FROM THE EDITOR’S DESK...

By Jeffrey Borenstein, M.D.

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**President’s Message continued from page 1**

Jeffrey Borenstein, M.D.

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**Healthy Minds on Public Television’s Thinkbright Stations**

Healthy Minds, the public television series focusing on mental health, hosted by Jeffrey Borenstein, M.D. is now airing on New York State Public Television Thinkbright’s “Health & Wellness” night.

The series airs Mondays at 10 p.m. on the following stations:

- WNET – Buffalo – Digital: 43.3, Time Warner Channel 21
- WSKG – Binghamton – Digital: 66.1 in Binghamton; 30.1 in Corning, Timer Warner Channel 750
- WPBS and WNPI – Watertown – Digital 16.2 and 18.2
- Mountain Lakes PBS – Plattsburgh – Digital 57.3
- WMHT – Albany – Digital: 17.3

The series has already aired in the NYC Metropolitan area on WLIW21 and has received four Telly Awards. As Dr. Borenstein explains, “Everyone is touched by psychiatric conditions, either themselves or a loved one. Our goal is to share cutting edge information from experts along with personal experiences from people who have overcome psychiatric conditions. I want people to know that with help, there is hope.”

The series can also be viewed on line at www.wliw.org/healthminds.
The Newly Created NYSPA Committee on Membership Recruitment and Retention
By Karen G. Gennaro, M.D.

I am very pleased to accept the challenge of heading up the newly formed NYSPA Committee on Membership Recruitment and Retention (COMRR) and I’d like to thank NYSPA President Deborah Cross, M.D. for creating a focus on membership in NY. I’d also like to thank NYSPA Membership Chairman Joseph Rubin, M.D. and APA Membership Recruitment and Retention Task Force Chairmen James Nininger, M.D. for helping lay the groundwork for the rejuvenation of membership energy at the APA.

Expansion of our membership base will help provide the necessary resources to meet the challenges of our ever changing profession. In this age of managed care, encounter management, population health, and lack of access to care by our patients, our collective membership in a group much larger than any of our individual voices is critical. The APA is working hard to protect our professional turf and to improve our patients’ access to care. Our challenge is to enlist our non-member colleagues in this effort.

A group of us accepted our mission from Dr. Cross and met at the inaugural meeting for this new NYSPA Committee at Area 2 Council meeting on 10/20/07. I am pleased to recognize Vanessa Hiraldo, M.D. of Rochester, Berney Goodman, M.D. of New York County, M. Shabenda, M.D. of Westchester, and Hugh Airen, M.D. of Queens for their time and contribution in launching this committee.

This newly formed committee is in the process of creating a plan to significantly boost APA membership, a plan that will include collaboration and competition between districts as well as financial incentives for the NYSPA, recognition awards to districts and branch.

In the past, most districts have limited their membership function to approving membership actions and encouraging members to apply for fellowship classification. This important administrative function has typically been subsumed under the responsibility of the Secretary or the President-Elect, or sometimes under a Committee on Membership. But we are now asking each of the district branches to consider establishing a special Committee on Membership Recruitment and Retention (COMRR) and naming a chair to work with the new NYSPA Committee. Some district branches may choose to have the same person responsible for membership administration as well as recruitment and retention.

In order to accomplish our ambitious goals, our expectation is that most district branches will name a second or third focus on recruitment and retention.

Our new committee will meet twice yearly at the Area 2 meetings as well as several times via telephone conference calls. Our motivation will be to compete with each other to have our respective district branch achieve the highest percent of new members the Board awarded for the district branch with the highest percent of new members for a consultant requested by Ed's coding group, to ensure that we maximize our influence in this convoluted process.

As with the rest of medicine, the APA’s relationship to the pharmaceutical companies and industry is under the microscope. The DSM-V Task Force on Disclosures that I am a member of continues to carefully review all nominated appointments to the DSM-V. The Board guidelines for example restrict direct industry income per year to $10,000 or less while serving on the DSMV Workgroups or Steering Committee. The APA is in the process of reviewing the disclosure and conflict guidelines for the other consultants or participants in the DSM-V, as well as the components, practice guidelines, publications, etc. While the guidelines may not always be the same, it is important to review and see if some common ground is possible and to be careful to ensure reasonable disclosure and management of conflicts. All members need to be involved in this critical discussion and in the direction our association should take!

REPORTS FROM WORKGROUPS/TASK FORCES/PROJECTS:
The Board approved an excellent work product on the PREVENTION OF THE TASK FORCE ON THE BIOPSY- CHOSICAL ASPECTS OF CHILDHOOD VIOLENCE. This report outlines the issues, treatment and advocacy, needs on the critical issue of childhood violence, and is available on the APA website. In addition, due to the importance of this work, the Board approved a corresponding Committee to address the issue of Childhood Violence, under the Component Committee on Child and Adolescent Services.

Pedro Ruiz presented an update on his presidential project, a book focused on the important topic of disparities in Mental Health and Behavioral Dependency treatment and services. It will include a wide range of contributors across the country and is expected to be published in 2009.

Finally, the Executive Committee had voted on 9-19-07 to sign on to the Amicus Brief of the American Psychological Association that supports a challenge in the California Supreme Court to California’s limitation of marriage to only opposite sex couples. It is critical that the APA be a clear voice on this issue as it makes its way through state courts across the country.

NEW APPOINTMENTS:
Dr. Richard Harding has been chosen as the new President of the APA and will continue the growth and effectiveness of the foundation. A new Executive Director, Mr. Michael Burke has also been chosen to join the team.

Mr. Burke comes to a close, once again Happy Holidays to you and your family, and may we all enjoy peace in the New Year.

Ann Sullivan, M.D.
Council who recently testified before the PDE Committee. In addition, Dr. Martin reported that the NYSPA Information Technology Committee has now initiated a Google group, which allows all members of the group to communicate via an online message board. Anyone interested in becoming a member of the Google group is welcome to sign up via the Google website. The Committee is currently discussing issues pertaining to records of minors children, opt-in and opt-out issues, and the issue of access to electronic records.

Edward Gordon, M.D., Chair of the NYSPA Political Action Committee (“PAC”), presented the PAC financial statement for January-September, 2007, compared with the same time period for 2006 and 2005, and the list of contributors to date. He encouraged all present to contribute if they had not already done so.

NYSPA Nominating Committee

Barry Perlman, M.D., Chair of the NYSPA Nominating Committee, announced that Seth Vivek, M.D., and James Ninninger, M.D., are running for Area II Trustee to the APA Board of Trustees.

NYSPA Distinguished Service Award

Barry Perlman, M.D., presented the NYSPA Distinguished Service Award to Richard Gallo, NYSPA Government Relations Advocate. Dr. Perlman noted Mr. Gallo’s 34 years of service to NYSPA and highlighted some of his many legislative accomplishments, including the passage of the Civil Libations Bill and Timothy’s Law. Dr. Perlman remarked that Mr. Gallo’s work as Chair of the Timothy’s Law Coalition truly embodied the spirit of NYSPA and its mission to improve care and treatment of persons with mental illness.

Harvey Bluestone Award

Aaron Slatoff, M.D., and Michael Scimeca, M.D., awarded the inaugural Harvey Bluestone Award to Seth Vivek, M.D. The Harvey Bluestone Award was created jointly by NYSPA and the Bronx District Branch in memory of Harvey Bluestone, M.D., a dedicated and distinguished long-time member of NYSPA. Dr. Scimeca praised Dr. Vivek for his love of teaching, advocacy for the profession, his many board certifications and his work in establishing the new NYSPA Scientific Paper Contest.

Legislative Report

Barry Perlman, M.D., Chair of the NYSPA Committee on Legislation, reported that the U.S. House of Representatives recently passed a federal mental health parity law. While original versions of the bill as proposed would have preempted Timothy’s Law, this bill, if enacted into law, will not preempt Timothy’s Law. Instead, it will mandate enhanced coverage for all health plans, including ERISA exempt plans. Richard Gall, provided an update on Timothy’s Law implementation. Mr. Gall plans to participate in a series of meetings to be held by the New York State Department of Insurance to address open issues, including the inclusion of PBX in as a covered disorder and the restructuring of the methodology for funding of licensed clinics. In addition, Mr. Gall reported that he has been invited to participate in legislative roundtable discussions on the current shortage of child psychiatrists. Over one hundred individuals are expected to participate. Finally, NYSPA will be reviewing the possibility of applying for New York State grants to address the shortage.

Executive Director’s Report

Seth Stein, NYSPA Executive Director, reported that NYSPA’s Executive Committee has authorized the commencement of a lawsuit by NYSPA against the New York State Department of Health in connection with Medicaid’s failure to pay the full case rate for services rendered to dually eligible individuals as of April 1, 2007. If we are unable to resolve the issue with NYSDOH, the lawsuit will be brought in the name of NYSPA and individual psychiatrists who have received only 70% Medicaid copayments for claims submitted after March 31, 2007.

Mr. Stein provided an update on Timothy’s Law implementation issues. First, NYSPA members have reported receiving retroactive payments from Oxford Health Plans, representing additional payment for psychiatric services rendered. These additional payments are required by Timothy’s Law, which mandates that co-payments for psychiatric services be the same as those imposed on all other medical conditions. Second, an upset insurance carrier has been requiring participating providers to submit patient intake forms to ensure proper diagnosis before paying claims in connection with the six major illnesses required to be covered under Timothy’s Law. This practice violates the HIPAA minimum necessary standard and NYSPA plans in the work to correct this practice. Mr. Stein also reported on recent changes to the New York State Social Services Law regarding reporting of child abuse or maltreatment. As of October 1, 2007, all mandatory reporters, including physicians, must make an individual report of suspected child abuse or maltreatment regardless of whether or not a report of the same circumstance has already been reported by another member of the facility staff. NYSPA will be soliciting clarification regarding whether a single report can be submitted identifying all those who are mandatory reporters rather than multiple reports from each mandatory reporter.

In addition, Mr. Stein stated that NYSPA members have reported that New York State Medicaid has been disallowing claims submitted under code 90862 and is instead applying code 99231, which is a code for a short hospital follow-up visit. Richard Gallo, NYSPA Government Relations Advocate, has agreed to contact the Department of Health regarding this problem. Mr. Stein also noted that psychiatrists and institutions have been using E&M codes for reimbursement for psychiatric services. He recommends using the E&M documentation templates prepared by NYSPA to ensure proper documentation in the event of an audit.

Finally, Mr. Stein introduced new NYSPA staff member, Christina Carrion, who will be working with Donna Gajda, NYSPA Coordinator.

Area II Trustee’s Report

Ann Sullivan, M.D., NYSPA Area II Trustee, provided an update on advocacy issues. She noted that the U.S. House of Representatives passed a federal parity bill and the APA has been very involved in the process to ensure that state mandates are not weakened. Psychologist prescribing was successfully defended in both California and Hawaii.

The National Alliance on Mental Illness has elected a new president, Dr. Amand Pandya, who met with the APA Board at its last meeting. Finally, the APA Board has decided to join an amicus brief being submitted by the American Psychological Association in support of a lawsuit challenging California’s limitation of marital status to opposite-sex couples only.

Dr. Sullivan reported that the APA budget for 2008 is expected to be $200,000 in the black and the APA currently has approximately $18 million in its reserve fund. She reported that the Board approved the recommendations of the Council on Member and District Branch Relations regarding EBISJA competitive grants. The following Area II district branches received grants in the following amounts: Brooklyn - $3,000; Greater Long Island - $4,860; Mid-Hudson - $1,800; New York County - $12,400; NYS Capital District - $21,900; Westchester - $5,842; and West Hudson - $1,800.

Area II Council Meeting
James E. Nininger, M.D.

Distinguished Fellow Member Since 1976

Private Practice, 1977-; Clinical Associate Professor of Psychiatry, Cornell University Medical College, 1989-; Speaker, APA Assembly, 2004-05; President, New York State Psychiatric Association, 1998-2002; Member, AP A Board of Trustees, 2003-05; Chair, Assembly Committee on Planning, 1999-2002; Member, Executive Committee: Steering Committee on Practice Guidelines, 2005-; Exemplary Psychiatrist Award, National Alliance for the Mentally Ill, 2006

Candidacy Statement

The role of Area trustee provides a tremendous opportunity to listen to, educate, and represent our members on the AP A Board. We are faced with critical challenges. Severe underfunding of services, stigma, managed care restrictions, and increasingly liberal scopes of practice allowing nonphysicians to help treat and treat mental illness (including the prescription of medications) all contribute to erosion of proper treatment for our patients and barriers to access to quality care.

In New York we must remain vigilant in sustaining the gains we have made in parity and scope of practice, and speak up on issues such as proper privacy of medical records and appropriate evaluation, diagnosis, and management of sexual offenders that do not deplete our mental health budget for chronic and indigent patients. We must better educate the public, government officials, and our nonpsychiatric colleagues as to the nature, prevalence, and cost-effectiveness of appropriate treatment of mental illness. To attain these goals, membership strength and involvement are crucial in AP A. At the same time we expand and refine our electronic communication abilities, we need to provide greater personal outreach to members in the field and impart to training directors and early career psychiatrists the importance of psychiatrists’ active involvement on behalf of our patients. This includes strengthening liaisons with the AMA, state medical societies, and advocacy groups. In New York, a strong alliance with the medical society has helped us to avoid intrusions into our scope of practice. To foster recruitment, we must continue to forge alliances with our allied psychiatric groups, consider shared-dues strategies, and be sensitive to the needs of international medical graduates and minority representatives, many of whom serve valiantly in the public sector.

APA has made progress in the prioritization of goals, removal of redundancy in committee and component functions, and the establishment of financial oversight mechanisms that include Assembly input to ensure fiscal responsibility. We must strive to improve communication with and between legislative and public affairs reps, executive director, and presidents and presidents-elect of our district branch. Difficulties in establishing a viable information system damaged morale in DBs through lack of an adequate available database and timely reporting of dues billings. Concrete steps have been taken to rectify this. I support having an expert business and financial advisory panel serve as consultant to the Board. As the Area trustee from New York on the Board, I would make sure these issues are pursued, and that future concerns of NY SPA members receive appropriate attention. I have lobbied in Albany for NYSPA and in Washington, D.C., for APA and serve on the Board of the APA PAC.

At the New York County District Branch, I established the first task Force on Psychiatry and Nursing Homes and chaired the Committee on Aging for 14 years. I was among the first group of psychiatrists to volunteer services to the homeless, volunteered at Pier 94 and ground zero with Disaster psychiatry Outreach following 9/11, in Louisiana following Katrina, and coordinate the Assembly liaison representatives to the AP A Committee on Psychiatric Dimensions of Disasters. As a member of the Medical Society of the State of New York, I have served on the Committee on Psychiatric Medicine and the Task Force on Psychiatry and Violence, and currently serve on the Task Force on Tobacco.

I have demonstrated strength in working well with diverse groups to establish consensus, have represented NYSPA as treasurer, vice president, and two terms as president and Area representative, and served on the AP A Board of Trustees as speaker-elect and speaker of the Assembly. I would be honored to serve as your Area 2 trustee.

Contact info: 212-212-879-8338 or nininger@bestweb.net

SeethVivek, M.D.

Distinguished Fellow Member Since 1978

Chair, Departments of Psychiatry and Addiction Services; Jamaica, Brookdale and Flushing Hospitals, NY; Chair, Advanced Center for Psychotherapy, NY; Part-time Private Practice, Forest Hills, NY; Secretary, New York State Psychiatric Association; Assembly Rep & Past President, Queens Psychiatric Society

Certified:
General Psychiatry, Addiction Medicine, Addiction Psychiatry, Geriatric Psychiatry, Forensic Psychiatry, Psychosomatic Medicine, Administrative Psychiatry

Awards:
The American Red Cross Award for service following 9/11
First recipient of the Harvey Bluestone Award (Ethics and Service)
Leo Davidoff Award for Medical Student teaching

Accomplishments:
Conceptualized and built a department of psychiatry
Started a Residency Training Program in 2001, Fellowship in 2007
Started a Psychiatry Externship in 1996
Started a free psychiatric clinic for indigent immigrants, Queens
Initiated Scientific Paper Contest, initially in Queens, now at the NY State level

Mission /Goals:
Bringing over 30 years experience in leadership and management to represent you in Washington.
Using experience in various subspecialties in hospital and private practice settings in Board deliberations.
Advocating Proactive legislation against Psychologist Prescription and Admitting privileges.
Introduce creative ideas in receiving enhanced Value for our Membership Dues
Advocacy for Training and Career development for MITs and ECPs.
Assisting APA members in all stages of their career (practice management, reciprocity of licensure etc.).

In the last 40 years APA voting has dropped to under 30%. Please do vote!
Together we can change our future

I will be honored to represent you. Thank you.

Contact info: 718-206-7165 or seethvivek@aol.com or www.seethvivek.com
increase in psychiatric fees in 2007 due to the implementation of reductions in the work value assigned to all Medicare CPT codes due to the increase granted to certain evaluation and management codes (99xxx). Because of statutory requirements that the cost of any increase in Medicare codes be "budget neutral", the 2007 increase for E&M codes was offset by decreases in the work values for all Medicare codes.

For 2008, Medicare has approved a 32% increase in the work values for anesthesia codes and this increase will be offset by an approximately 2% reduction in the work values for all CPT codes. In sum, psychiatric codes (908xx) face a net decrease of 2% from 2007 to 2008 unless Congress takes action this winter.

In addition to the challenge posed by fee decreases, Medicare also imposes fee limitations on non-participating physicians and New York has imposed even more stringent restrictions on non-participating physicians than the federal law. At the same time physicians are facing rapidly escalating costs of practice. For example, liability insurance rates climbed an astounding 13% this year in New York State which prompted Governor Spitzer to create a Blue Ribbon Commission to study the problem which is rapidly becoming a crisis in our state. Even if Congress passes major Medicare legislation that will postpone the drastic Medicare fee reductions, this legislation will only cover 33 1/3% of the amount paid is non-deductible. If only a partial payment was made, then 33 1/3% of the amount paid is non-deductible.

The Omnibus Budget Reconciliation Act of 1993 included certain provisions denying tax deductibility for the portion of dues paid to 501(C)(6) professional organizations that is spent on influencing state or federal legislation. The law requires NYSPA to provide its members with a good faith estimate of the portion of their dues which is attributable to lobbying and therefore, is non-deductible for federal income tax purposes.

For 2008 dues, NYSPA has estimated that 33 1/3% of NYSPA/Area II dues are attributable to lobbying and cannot be deducted. The schedule below sets forth the calculation of the deductible and non-deductible portion assuming payment in full. If only a partial payment was made, then 33 1/3% of the amount paid is non-deductible.

Our services include:
- Top-notch legal counsel with a proven track record
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- Complimentary risk management seminars
- Rx for Risk quarterly newsletter and risk management manuals
- Exclusive access to our Online Education Center (OEC)
- And, more!

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More than just medical malpractice insurance.

For over 20 years, we have been the leader in medical malpractice insurance for psychiatrists and mental health professionals. You can depend on us to provide you with more than just insurance.

Notice of Good Faith Estimate of Non-Deductibility of NYSPA 2008 Dues

The Omnibus Budget Reconciliation Act of 1993 included certain provisions denying tax deductibility for the portion of dues paid to 501(C)(6) professional organizations that is spent on influencing state or federal legislation. The law requires NYSPA to provide its members with a good faith estimate of the portion of their dues which is attributable to lobbying and therefore, is non-deductible for federal income tax purposes.

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Membership Category 2008 Dues Deducible Non-Deductible

General Member/Fellow 150.00 100.00 50.00
Member in Training 15.00 10.00 5.00
Life Member/Life Fellow (1-5) 100.00 67.00 33.00
Life Member/Life Fellow (6-10) 50.00 33.00 17.00

Please note that this notification only applies to NYSPA/Area II dues. It does not apply to APA dues or to district branch dues. If you have any questions, please do not hesitate to contact the NYSPA Central Office.