GREATER UPSTATE LAW PROJECT Vol. 2003 No. 6 December 2003

Legal Services Journal

The New Medicare Act

Very Little Help at a Huge Cost

By Trilby de Jung

To the surprise of some, and consternation of many, the Medicare Prescription Drug and Modernization Act of 2003 was recently approved by both houses of Congress and signed into law by President Bush on Monday, December 8, 2003.

Opposition to the bill was significant and negotiations were stalled as late as mid-November. Nonetheless, thanks to active lobbying from the President and the efforts of House Speaker Dennis Hastert and Senate Majority Leader Bill Frist, the measure squeaked through the House by five votes and passed the Senate 54-44.

The AARP played a decisive role when it decided to endorse the bill toward the end of the negotiations and spent $7,000,000 in a one-week media campaign to assure its passage. Not surprisingly, drug companies outspent any other health care group in their lobbying efforts around the bill.

So, now that the dust has cleared, how bad is it? Unfortunately, the answer to that question is bad, very bad. Despite Administration claims to the contrary, the prescription drug benefit provided to seniors is meager, and the Act prohibits the government from using the purchasing power of over 40 million Medicare beneficiaries to negotiate lower drug prices.

This article will discuss winners and losers under the Medicare Act of 2003, and the ways in which the new law can be expected to affect low-income New Yorkers.

Three Levels of Low-Income Assistance

The Medicare Act of 2003 sets up a new prescription drug benefit, to take effect in 2006. The Act fundamentally alters the nature of the Medicare program by linking assistance with cost-sharing provisions to income and asset levels. For low-income New Yorkers, three levels of assistance are specified.

(Continued on page 2)

INSIDE THIS ISSUE:

The New Medicare Act	1
Notes from GULP's Director - Anne Erickson	5
Elderly Immigrants and Immigrant Victims of DV Score Win	7
Foreign Language in the Workplace	8
LSC Expands Categories on Non-citizens Who May Be Represented	9
Annual Social Security COLA Increases Announced	10
Will EITC Take on Trappings of Welfare?	11
Regulatory Roundup	15
GULP Partners with Affordable Housing Partnership	19
Gene Doyle Joins GULP	20
Bank Snooping	21

Medicare Act—continued

(Continued from page 1)

The first level of assistance applies to, Medicaid eligible seniors who will be exempted from premium payments and deductibles, but will be required to make co-pays.

- Those with incomes below 135% of the federal poverty level will have co-pays of $1generics/$3 name brands, up to the out of pocket threshold.
- Those with incomes above 100% of poverty will have co-pays of $2 generics/$5 name brand drugs, up to the out of pocket threshold.
- Institutionalized Medicaid eligible seniors will have no cost-sharing requirements.

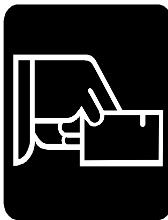
The second level of assistance applies to seniors with income below 135% of poverty who are not Medicaid eligible.

- This group will also be exempted from premiums and deductibles
- The group will be subject to the same co-pays as Medicaid eligibles below 135% of poverty ($1 generics/$3 brand names).
- However, this group will be subject to an asset test of $6,000 for an individual and $9,000 for a couple.

The third level of assistance applies to seniors below 150% of poverty.

- This group will be subject to an asset test of $10,000 for an individual, $20,000 for a couple.
- The group will pay a premium of up to $35 a month on an income-based sliding scale, an annual deductible of $50, and 5% of drug costs after the deductible is met.

The co-payment amounts for all seniors above the federal poverty level will be raised each year at the rate that drug costs increase per Medicare beneficiary. Those costs are projected to increase at least 10 % per year. Thus, for elderly and disabled poor people who live on fixed incomes such as Social Security checks that rise with the general inflation rate (2-3% a year), prescription drugs will become increasingly unaffordable, particularly for those seriously ill or disabled persons who need a large number of medications.



For those “middle-class” New Yorkers above 150% of poverty, premiums are estimated at $35 a month with a $250 annual deductible. Only after this deductible has been met will the benefit kick in. Benefits will be provided for expenses between $250 and $2,250 per year, subject to 25% co-pay. After the beneficiary has incurred $2,250 in drug expenses, there will be no further coverage until the individual has incurred $5,100 in drug costs. This period of lack of coverage is referred to as the “doughnut hole.” After the individual has spent $5,100, catastrophic coverage begins. Catastrophic coverage will pay 95% of all prescription costs in excess of $5,100 per year.

While the Administration touts the new discount drug cards as a significant new benefit, these cards will function much the same way as existing discount cards, providing access to negotiated discounts for an annual fee. The General Accounting Office estimates savings of only about 10% off regular prices. Notably, the Act does not set any rules about the base prices from which the discount card operates. Thus the value of any discount will significantly decrease as drug prices rise. Seniors with income below 135% of poverty will get free cards and receive a credit worth $600, if they are not receiving outpatient drug coverage from any other source.

(Continued on page 3)

Medicare Act—continued

(Continued from page 2)

It is estimated that fewer than 10% of Medicare beneficiaries will qualify for catastrophic coverage. The result, according to the Center on Budget and Policy Priorities, is a benefit that will cover less than 25% of the prescription drug costs of America's elders and people with disabilities.

Covered Drugs and Actual Premiums To Vary By Plan

The Act provides that the prescription drug benefit will be provided through private prescription drug plans that contract with the Medicare program. To receive the benefit, seniors will need to sign up with a plan offering the benefit in their area. Medicare is required to contract with at least two plans or provide a government run "fall-back" plan in underserved areas. Private plans can charge different premiums and different co-pays as long as the entire plan is of equal value (as determined by an actuary) to the standard as described in the legislation.

Drugs covered can vary from plan to plan. Medicare has guidelines for what plans must cover, but those guidelines only require coverage of some drugs in all "therapeutic" classes and private plans will have discretion to determine how such classes are defined. Beneficiaries who need an uncovered drug will have to pay entirely out of pocket and those expenses will not count toward meeting deductibles. Beneficiaries can appeal for coverage on non-formulary drugs only if the prescribing physician determines that all covered drugs in the therapeutic class would not be as effective for the patient, or would have significant adverse effects for the patient, or both.

Isn't the Benefit Voluntary?

Not for the low-income. The Act allows states to require dual eligibles to join the Medicare drug plan if they want to continue to get Medicaid. Thus, those receiving drug coverage under Medicaid are likely to be forced into the new Medicare drug benefit, even though, as described above, in most cases they will have higher co-pays and may lose access to certain drugs they currently can obtain through Medicaid.

In addition, the Act prohibits states from using federal Medicaid matching funds to supplement or "wrap-around" the new Medicare benefit and cover co-pays or drugs excluded from coverage due to the application of a plan formulary. Only if an entire class of drug is missing from a formulary will state Medicaid programs be allowed to cover the medication and receive federal matching funds. If state officials want to supplement the Medicare drug benefit, they have to pick up the entire cost of the extra coverage. States will not get the discounts and rebates they now receive from manufacturers under Medicaid.

Even middle-income seniors with retiree drug coverage will have no choice but to receive more restrictive drug coverage through the new Medicare drug benefit if their employers drop coverage. Although the Act allocates funds for incentives to stop employers from dropping coverage, the Congressional Budget Office has estimated that over 20 percent of retirees with good drug coverage would lose that coverage as a result of the legislation.

Don't States Get Significant Fiscal Relief?

While the new program is touted as a *federal* prescription drug benefit for seniors, even this description is misleading. Under the Act's "claw-back" provision, states are required to make payments to the federal government each month. These payments are calculated based on estimated savings created by the program multi-

(Continued on page 4)

Medicare Act—continued

(Continued from page 3)

plied by a "take back" factor, set at 90% in 2006 and phased down to 75% in 2015 (the factor never falls below 75%).

Thus, the federal government actually assumes only 25% of the costs of providing the drug benefit to dual eligible individuals, and that share is phased in over ten years. In addition, the Medicaid Qualified Individual (QI) program, which has traditionally saved money for states by authorizing state Medicaid programs to cover Medicare premiums for dual eligibles, is extended only through September 2004, despite efforts to make the program permanent.

Administration of the program threatens to be another financial drain for the states. The Act holds state Medicaid programs responsible for determining eligibility for low-income subsidies for the program's cost sharing requirements. States are expected to perform this new function without full federal reimbursement for the administrative costs. The match rate for running the eligibility determinations will be 50% rather than the 100% match rate more commonly applied to state administrative costs.

The Real Winners (and Losers)

Drug companies are the clear winners under the Medicare Act of 2003. The pharmaceutical companies succeeded in getting a bill that does virtually nothing to moderate drug costs. The legislation actually prohibits Medicare from using its purchasing power to negotiate lower drug prices for beneficiaries. While private health plans can seek discounts for those enrolled in their plans, they don't have Medicare's purchasing power, so they will have much less leverage to get lower prices. Pharmaceutical companies, adamantly opposed to price controls, prefer to deal with dozens of private buyers rather than a single federal agency. In addition, the new drug benefit will mean a much larger volume of sales (estimates run as high as $13 billion in increases per year).

Managed care plans are also winners. Under the Medicare program, beneficiaries can elect to receive all of their Medicare benefits, including the new drug benefit, from private managed care plans (primarily HMOs) rather than through traditional Medicare fee-for-service. The Medicare legislation increases payment to these private managed care plans by more than $14 billion, despite the fact that the Medicare Payment Advisory Commission, a nonpartisan organization established by Congress to analyze Medicare payment policies, has found that private plans already are reimbursed at rates 19% higher than traditional Medicare pays. Under the new Act, private plans will be reimbursed at rates approximately 25% higher than traditional Medicare.

Immigrants lost out under the new Medicaid Act, as did New York state coffers that currently fund Medicaid services for legal immigrants without any federal contributions. The Senate version of the bill included a provision known as ICHIA (Immigrant Children's Health Improvement Act), which would have restored federal Medicaid funding for legal immigrant children and pregnant women. However, the ICHIA provision was removed during the conferee debate. In addition, funding to hospitals in the Act is linked to census data on undocumented immigrants, with higher funding for the six states with the highest immigrant apprehension rates. Even worse, the Republican leadership reportedly promised Representative Rohrbacher that, in exchange for his vote, he could propose legislation in 2004 to require hospitals to report undocumented immigrants within two hours of their care.

By now it should come as no surprise that those hardest hit by the new legislation are the

(Continued on page 22)

The Names Remain, The Changes Continue

An Update On Our "Merger"

By Anne Erickson

The Greater Upstate Law Project and the Public Interest Law Office of Rochester continue moving forward with their planned "merger." We call it more of a "blending" since we currently operate under a single corporate structure, but until now have operated as two very distinct organizations.

Over the course of the past eighteen months, we have worked to combine the organization into a seamless whole. We've had a number of full staff meetings with incredibly high energy and great interactions. We've gotten to know each other better, across the two sides of the organization as well as across the geography of White Plains, Albany and Rochester.

We worked hard over the summer to create a new mission and vision for the combined organization – and in doing so reaffirmed our core commitments, to our clients and our community:

Vision

To be a statewide leader working to achieve social and economic justice for poor, disabled and disenfranchised residents of New York State.

Mission

To protect and strengthen the legal rights of New York State residents who are poor, disabled or disenfranchised through:

- **systems change advocacy**
- **training and support of other advocates and organizations, and**
- **high quality direct civil legal representation**

A New Structure

We are already working jointly on a number of projects – from fighting lead poisoning in Rochester to attacking predatory lending in Rochester and Albany. To better align our work, we have organized ourselves into Practice Groups, each with a coordinator and designated support person. These groups will work together to develop our litigation docket, identify and address emerging issues, put together and press for a comprehensive legislative agenda, and provide training and backup to local programs. Obviously, it will take time for it all to gel, but we're committed to making it work.

Our hope is to be able to provide a full range of services in a greater number of issue areas. GULP's strength in health care and housing, for instance, will be combined with PILOR's depth of expertise in predatory lending and special education issues. Where appropriate and possible, we will provide a blend of traditional state support services and direct local representation. For example, PILOR will continue as the direct service provider under the Disability Advocacy Program (DAP) in Monroe County. We will also continue as the DAP sate support center under separate contract.

Welcome the Practice Groups

Civil Rights and Education, coordinated by Jonathan Feldman, supported by Gladys Castro and including Peter Dellinger, Sarah Gilmour, Mike Hanley and Spencer Phillips.

Disability Benefits, coordinated by Louise Tarantino and Kate Callery, supported by Angie Hale and including Mike Bonsor, Doris Cortes, Jayne Elebiari, and Tania Santiago.

(Continued on page 6)

Statewide Hearing Skills Training a Success

Twenty-four attorneys and paralegals from across the state recently participated in an Administrative Hearing Skills training in Binghamton. It was the first state wide generic skills training conducted in the state in several years. During three intense "hands on" training days, participants analyzed, developed, prepared and presented an administrative hearing based on an unemployment insurance case file.

The training received very good evaluations. One participant noted, "It felt like a semester of law school 101 rolled up in 2 ½ days." Another commented, "This was so useful! I can use the info and pass it on. It brings more confidence and structure to the way I work with clients, files, gathering information, etc."

The training was sponsored by the New York Legal Services Training, Leadership and Diversity Workgroup and the Greater Upstate Law Project. Many thanks to the trainers: Peter Racette, North Country Legal Services, Valerie Blackshear, Legal Aid Society of Mid New York, Jody Davis, Legal Assistance of the Finger Lakes, Amy Jacobson and Jan Walker, Southern Tier Legal Services, Ron Hager, Neighborhood Legal Services and Jerry Wein, Greater Upstate Law Project. Special thanks to Michelle Peterson who coordinated the program.

Merger—continued

(Continued from page 5)

Domestic Violence, Immigrants' Rights, Public Benefits and Health, coordinated by Trilby de Jung and Barbara Weiner, supported by Bob Carlton and including Susan Antos, Linda Bennett, Rob Cisneros, Spencer Phillips, Amy Schwartz, and Anzala Wilson.

Housing and Economic and Community Development, coordinated by Ruhi Maker, supported by Michelle Peterson and including Becky Case, Peter Dellinger, Mike Hanley, Kirsten Keefe and Barb van Kerkhove.

And the Management Team

I will take on the roles and responsibilities of President and CEO for the full organization on January 1. Bryan Hetherington will become Chief Counsel for the organization, Kristi Hughes will be our Development Director and Kristin Brown will be Director of Legislative Advocacy. Nancy Krupski will be our IT Coordinator and Becky Schroeder will be our Fiscal Manager.

While we will all continue our current internal and external roles and things will be in flux for a while – but we are beginning to see the incredible potential inherent in bringing these two dynamic organizations together – with a single mission and clearly focused vision. We look forward to continued collaborations with all our partners in the greater legal services community.

Here's to 2004 --

Anne Erickson

Elderly Immigrants and Immigrant Victims of Domestic Violence Score Win in Challenge to State's Food Stamp Program

By Barbara Weiner

In a stunning decision issued on December 8, 2003, Judge Marilyn Diamond of the Supreme Court, New York County, ruled that the State's restrictions on the access of lawful, qualified immigrants to the State's Food Assistance Program (FAP) violate state and federal Equal Protection guarantees.

The case, entitled *Yankel Teytelman, et al. v. Brian J. Wing,* Index No. 402767/02 (Sup. Ct. N.Y. Co.), challenges the constitutionality of provisions in the law establishing FAP that; entirely exclude immigrants who arrived in the U.S. after 8/22/96 from eligibility for benefits; and require those who are eligible ble for benefits to apply for naturalization as a condition of receiving them. A third provision challenged by the *Teytelman* plaintiffs denies access to benefits to any immigrant who would otherwise be eligible but who had been out of the U.S. for more than 90 days in the 12 months preceding application. The Court granted a preliminary injunction and restrained the State from withholding FAP benefits from the named plaintiffs on any of the challenged grounds during the pendency of the case.

By way of background, the Food Assistance Program was established in 1997 to provide state and locally funded food stamp benefits to certain particularly vulnerable groups of immigrants who were no longer eligible for the federal program because of welfare reform. FAP initially provided assistance to children, the elderly and the disabled. Two years ago, FAP was amended to provide state-funded food stamp benefits to victims of domestic violence. Local social services districts are not required to operate the program and currently only ten do so. Among them is New York City, where the majority of the state's immigrants currently reside.

Two of the groups FAP originally served, children and the disabled, are now eligible for Federal food stamp benefits without regard to their date of entry into the U.S. because of immigrant restorations enacted by Congress two years ago. However, even under the federal restoration, non-disabled adults must wait in a qualified immigrant status for five years before becoming eligible for the federal program. Thus, the decision is a big victory for two groups of New York immigrants: survivors of domestic violence and the elderly who have been in a qualified immigrant status for less than five years. The Court, "compelled", as it said, to follow the Court of Appeals decision in *Aliessa v. Wing*, 96 N.Y.2d (which struck down the State's law denying Medicaid to certain lawful residents) subjected FAP's residency and travel restrictions, and its application for citizenship requirement, to a strict scrutiny test, which will ultimately spell their doom.

Plaintiffs are represented by GULP attorneys Barbara Weiner and Amy Schwartz; Jennifer Baum of the New York Legal Aid Society; Connie Carden of the New York Legal Assistance Group; Sister Mary Ellen Burns of the Northern Manhattan Improvement Corporation and Rebecca Scharf of the Welfare Law Center.

Foreign Language in the Workplace:

A Costly Battlefield

By Spencer Phillips

What can an "English-only" rule cost an employer? How about $50,000? Perhaps $150,000? Actually, the latest sticker price of a discriminatory "English-only" rule rang up at $1.5 million dollars, when the U.S. EEOC settled a case with a Colorado casino in July of 2003. [1]

The casino made an expensive mistake of enforcing its "English-only" workplace rule upon non-English speaking employees. While it is unnerving to hear of an employer engaging in such a blatantly discriminatory practice, the scarier part lies in how easily employers can protect themselves from liability.

The Employer's Protection

Over the past two decades, the jurisprudence of "English-only" workplace rules has forged an almost impenetrable suit of armor, shielding all but the most ignorant employers from liability under Title VII of the Civil Rights Act of 1964.

Donning this protective armor is a rather simple task:

First, the employer must identify a legitimate business purpose (LBP) for its "English-only rule. As early as 1980, the federal courts began identifying a plethora of questionably qualified LBPs, including: helping employees improve their English reading and speaking skills,[2] encouraging employees to approach customers in English ,[3] and preventing non foreign language speaking employees from feeling that they are being left out of conversations, [4] or that they are being talked about in a language that they do not understand. [5]

Second, the employer must not enforce the rule "at all times," but should allow employees to speak the language of their choice on breaks and lunches. According to the EEOC, an "English-only" rule that is applied at all times "may violate Title VII."[6]

The third step seems painfully obvious; the "English-only" rule may only be enforced against bilingual employees. In other words, employees that do not speak any English may not be forbidden from speaking at all. A failure to navigate this step resulted in the Colorado casino's $1.5 million dollar stumble.

Penetrating the Armor

As plaintiff's attorneys, how do we mount an effective attack against discriminatory "English-only" workplace rules?

The first tactic is to find a weak link in the employer's armor; has the employer neglected any of the three steps outlined above?

If this effort fails, follow the lead of *Velasquez v. Goldwater,* [7] which distinguished the valid "English-only" rule from the discriminatory "no-Spanish" rule. If an employer bans a specific foreign language from the workplace but allows another foreign language to be spoken, you likely have a Title VII violation on your hands!

Footnotes

[1] Http://www.eeoc.gov/press/7-18-03a.html
[2] *Garcia v. Gloor*, 618 F.2d 264 (5th Cir. 1980)
[3] *Prado v. Lauria*, 975 F. Supp. 1349 (1997)
[4] *Roman v. Cornell*, 53 F. Supp. 2d 233, (1999)
[5] *Id*.
[6] EEOC Guidelines on Discrimination because of National Origin, 29 C.F.R. 1606.1
[7] *Velasquez v. Goldwater Memorial Hospital*, 88 F. Supp. 2d 257 (2000)

Legal Services Corporation Expands Categories of Non-citizens Who May Be Represented

By Barbara Weiner

On September 29, the Legal Services Corporation (LSC) issued a Final Rule, adding to the immigrant classifications eligible to receive services from field legal services programs set out in the Appendix to 45 CFR Part 1626, the regulation which sets forth the limits on services to non-citizens. See 68 Fed. Reg. 55539, et seq.

The amendment enlarges the group of non-citizens who are eligible for assistance based on having a citizen spouse, parent or child and an application pending for adjustment of status to lawful permanent resident (LPR). In the past, this category was limited to people with an I-485 application for permanent residence pending. This meant that primarily only people who were applying for permanent residence based on family petitions were eligible for legal services. The National Immigration Law Center has worked hard over the past two years or so to persuade the LSC that an immigrant who has filed any one of a variety of applications leading to permanent residence should be eligible, as long as they have a qualifying relative. This would allow someone to get legal assistance if, for example, he or she has applied for asylum and has a citizen child.

As a result of the September 29th changes, LSC now recognizes non-citizens as eligible for legal assistance who have the following applications pending, as long as they have either a U.S. citizen spouse, parent or child:

- an application for adjustment of status based on a family based visa, registry or various special adjustment laws (form I-485);
- an application for Family Unity under the 1986 amnesty program (form I-817);
- a family based visa petition (form I-130);
- a self-petition as a widow(er) or battered spouse or child (form I-360);
- an application for V status, which is filed by the spouse of a LPR whose family based petition has been filed before December 2000 and has been pending for at least three years (form I-539);
- an application for spouses and children of U.S. citizens for K status, which allows them to come to the US while waiting for adjustment to permanent resident status (form I-129F);
- an application for asylum (form I-589);
- an application for suspension of deportation (forms I-256A or EOIR-40) or for cancellation of removal (form EOIR-42);
- an application for suspension or cancellation under the Nicaraguan Adjustment and Central American Relief Act (form I-881);
- an application for adjustment from temporary to permanent residence (form I-698), or
- a refugee/asylee relative petition (form I-730).

Proof of filing may include a fee receipt or canceled check, a filing stamp on a copy of the application or a copy of the application accompanied by an attestation or declaration signed by the immigrant, or his or her attorney or legal representative, that the form was filed. A letter of form notice (I-797) from the INS (now USCIS) or the Immigration Court acknowledging acceptance or approval or one of these forms is also acceptable. For people who have received employment authorization as a result of filing any of the above listed applications, the employment card will contain a specific code that is also acceptable evidence that one of the above applications has been made.

Annual Social Security Cost of Living Increases Announced

By Louise Tarantino & Kate Callery

In mid-October, the Social Security Administration (SSA) announced its annual cost of living adjustments (COLA). The 2004 adjustment represents a 2.1 percent increase in benefits, compared to a 1.4 percent rise in 2003.

For SSI beneficiaries, the federal benefit amount is slightly increased as follows:

for an individual	from $552	to $564
for a couple	from $829	to $846

The New York State supplement remains unchanged (again).

The COLA affects the SSI student earned income exclusion. The exclusion for a blind or disabled child who is a full time student increases from $1,340 in any month to $1,370 in any month with the annual maximum going from $5,410 to $5,520.

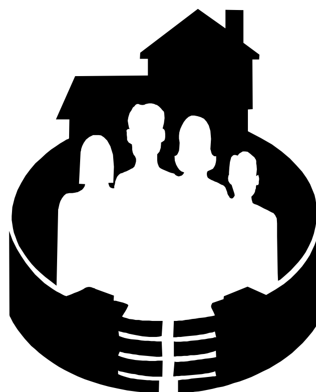
A quarter of coverage is earned, up to 4 per year, for every $900 earned during the year in 2004, up from $890 in 2003.

The revised work incentive amounts also have been announced. The substantial gainful activity (SGA) threshold amount for 2004 is $810 per month, up from $800. For blind beneficiaries it goes from $1,330 to $1,350. A beneficiary eligible to accumulate Trial Work Period months gets a TWP month with earnings over $580, up from $570.

For Title II beneficiaries, the COLA is applied to the original primary insurance amount (PIA) as increased by prior COLAs.

The monthly premium paid by beneficiaries enrolled in Medicare Part B, which covers physician services, outpatient hospital services, certain home health services, durable medical equipment and other items, will be $66.60, an increase of 13.5 percent or $7.90 over the $58.70 premium for 2003.

The SSI Benefits Level Chart for 2004 is available at www.gulpny.org.



Will the Earned Income Tax Credit Take on Trappings of Welfare?

IRS Pilots Certification Process for EITC

By Susan Antos

In early 2004, legal services organizations may begin receiving calls from their low income working clients requesting help in filling out a new form - IRS form 8836 (available at http://www.irs.gov/pub/irs-fill/f8836.pdf with instructions). This form, which is both confusing and intrusive, will be sent to 25,000 low income taxpayers, primarily foster parents, relative caregivers and single fathers, by the Internal Revenue Service, requesting that the low income taxpayer certify for the Earned Income Tax Credit (EITC). To the extent that legal services offices can provide assistance, either by mobilizing tax lawyers on their pro bono panels, or by locating resources in their communities that can provide assistance, they will be performing an important service for their clients.

The Earned Income Tax Credit supplements the earnings of low income families without the demeaning, privacy-invading trappings of the usual welfare application. In 2002, over 19 million low-income taxpayers claimed the Earned Income Tax Credit (EITC). In that year, the maximum credit for a claimant with two children was $4,140; with one child, the maximum was $2,506; and, with no children, the maximum was $376. In 1999, the EITC lifted 4.7 million individuals out of poverty including 2.5 million children. New York augments the EITC by a generous state EITC set at 30% of a tax filer's federal EITC.

In June, the Internal Revenue Service (IRS) promulgated announcement 2003-04, describing its plan to begin an EITC "pre-certification program."[1] (end notes located on page 18) As originally proposed, the plan would have required 45,000 taxpayers to "pre-certify" their eligibility by proving that their children lived with them for more than half of the year. The focus of "pre-certification" is relative caregivers, foster parents and single parent fathers. The IRS originally indicated that it would increase the number of pre-certifications to two million for the 2004 tax year and up to five million after that. The federal government's fiscal 2004 budget allocates $100 million and a staff of 650 people to the EITC pre-certification program.

In response to a flurry of public comment after the June announcement,[2] the IRS simplified the process, making the forms less burdensome and requiring that they be submitted contemporaneously with tax returns, making it a "certification," rather than a "pre-certification" process. The number of affected taxpayers was reduced and it is hoped that the expansion of the program will be delayed. Nevertheless, this process imposes a verification burden upon low income taxpayers, which is imposed upon no other taxpayers.

Those chosen to fill out the 8836 will have to certify under penalty of perjury that a child resided with them for at least six months during the tax year, and will have to provide documentation (school records, medical records, child care provider records, leases, utility bills, or social service agency records) or third party verification of the child's residence - from a health care provider, clergyman, school, child care provider, or someone included on the IRS list of other appropriate sources. The third party verification requires the third party to sign an affidavit under penalty of perjury.

The IRS is testing two different schedules to accompany the form 8836: schedule A and

(Continued on page 12)

Earned Income Tax Credit—continued

(Continued from page 11)

schedule B. Taxpayers will be sent out one or the other, apparently at random. Schedule A has a check off list allowing the third party to identify him or herself and states: "Based upon my records or personal knowledge, I believe that one (or both) of the above named taxpayers and (name of child/children) lived together at the following addressed from _______to _____."

Schedule B allows the affiant to describe his or her relationship to the taxpayer and requires that the affiant check a box indicating whether the affidavit is based upon personal knowledge or records, and then to explain either the basis of the personal knowledge or the records.

No other tax benefit is subject to a certification requirement. The deferred compensation and off-shore tax shelters of corporate executives are not subject to certification. Low income taxpayers should similarly not be subject to this unprecedented process.

Why is the IRS doing this?

In 2002, the IRS issued a report, "Compliance Estimates for Earned Income Tax Credit claimed on 1999 Returns," that estimated the EITC overpayment rate as between 27% and 31.7%, resulting in $8.5 billion and $9.9 billion EITC overpayments. It was this report, which can be found at http://www.irs.gov/pub/irs-utl/compesteitc99.pdf, which inspired the certification initiative. The overpayment rates in this study are overestimated because they assumed that every audited person who did not respond to an IRS audit was ineligible for every dollar of EITC benefits that they received.[3] Even the IRS report concedes that its conclusions do not reflect the impact of recent statutory changes that were intended to decrease overpayments.[4] These statutory changes, which were aimed directly at lowering EITC error rates, include denying EITC claims to non-custodial fathers listed with the National Child Support Case Registry, conforming EITC income definitions to those on the 1040 and 1040A forms, and simplifying the "AGI tiebreaker rules," which complicated claiming the EITC when a child's parent and a relative caregiver both lived in the same household.

The Process May Discourage Eligible Filers

As it is, many low income tax payers find the tax process overwhelming and difficult. The 2002 Report of the National Taxpayer Advocate reports that **nearly 70% of EITC filers use paid tax preparers.** [5] Although the reasons for using paid tax preparers are multiple, including the desire for a refund anticipation loan, many taxpayers eligible for the EITC use paid tax preparers because they find tax forms intimidating. The certification procedures, which require documented proof of the child's residency, create a burdensome, confusing and embarrassing barrier for low income taxpayers which may make compliance impossible for many filers.

Low income wage earners who certify will have to make others in positions of authority aware of their economic status, and as with the welfare system, may come to find the process demeaning and humiliating. The certification process will change the character of the EITC from a wage supplement that allowed low income taxpayers to keep their dignity to one in which a particular class of taxpayers is treated differently - stigmatized by having to reveal their status as low income to persons from whom they may wish to keep their economic status private.

Further, since the New York State EITC is tied on a percentage basis to the federal EITC, those who do not file for the federal EITC or are unable to comply with the federal certification procedures, despite their good faith attempt to do so, will also not receive their New York State EITC.

(Continued on page 13)

Earned Income Tax Credit—continued

(Continued from page 12)

How Will Taxpayers Obtain Assistance in Completing Form 8836?

Form 8836 will be particularly difficult for those with limited literacy or whose primary language is not either English or Spanish. Many others may not fully understand what information they are being asked to provide or may be confused in regard to which tax year they are meant to address in providing documentation.

Affected filers struggling to understand the form and meet their obligation to certify will often have no one to turn to for assistance. If these filers fail to submit the form or complete it inadequately, their claims for EITC benefits will either be denied or delayed. While an IRS (800) number is provided and filers are also urged to contact their "IRS Taxpayer Assistance Center" for help, we are not convinced that these resources will be sufficient. Legal services offices should at a minimum provide their intake staff the phone number location and hours of their local Taxpayer Assistance Office, which can be found on-line at www.irs.gov/localcontacts. If legal services offices have access to pro bono tax attorneys, they may want to alert them to be available for assistance.

Taxpayers Are Limited in the Proof They Can Offer

Proving through various records that a child resided with the taxpayer for more than half the year will be quite problematic. The IRS certification procedures allow only for certain documentation which must contain the filer's name, the child's name or both names; a street address and the dates that the filer and/or the child lived at that address and the name, address and phone number of the person or organization that provided the document. The IRS list includes school records, medical records, child care provider records, leases, utility bills, or social service agency records as acceptable documents, but many of these may be difficult to secure.

Further, many documents may prove inconclusive in establishing a child's residency. For example, a utility bill in a parent's name is allowable to establish an adult's residence; additional documents will be required to establish the child's residence.

As an alternative, perhaps in recognition of the often, inconclusive nature of such records, either alone or in some combination, the IRS allows for an affidavit from a third party (this is the affidavit A or B mentioned above). The affidavit must be signed under penalty of perjury attesting that the signer has "personal knowledge" of records showing that the filer and the child resided together at a specific address for more than half the year. It is likely that many filers will not be able to produce documentary records and so will be more likely to seek such an affidavit from a third party.

Most Day Care Providers Will Be Unable to Comply With the Official Letterhead Requirement

Option three on form 8836 allows the taxpayer to submit a letter on "official letterhead" from child care providers. In New York State there are 8,055 family day care providers and 2,417 group family child care providers which nearly exclusively operate out of the provider's homes.[6] Additionally, a significant number of families receiving child care subsidies utilize "informal" or legally exempt providers, who by law can not care for more than two children other than their own.[7]

In New York City, 68% of parents not on pubic assistance who receive child care subsidies use legally exempt care. Although the percentages vary dramatically in upstate counties, ranging from 9% in Putnam County to 66% in Lewis County, the numbers are significant. Statewide, 12,606 children receive full time subsidized child care in legally exempt settings

(Continued on page 14)

Earned Income Tax Credit—continued

(Continued from page 13)

and 4,956 child receive part time subsidized child care in legally exempt settings. [8]

Most of these providers do not have "official letterhead," making it unlikely that they could assist the taxpayer with option three.

Certification Will Be Particularly Harmful to Grandparent Caregivers

Working grandparents who are raising a child will find these procedures invasive, confusing and daunting. Because the EITC is a self-declaration program, it has not encountered the resistance that often exists among older low income individuals to apply for traditional entitlement programs because of the perception of stigma attached to them. Requiring grandparents to approach school officials or other public officials or private providers in the community to obtain documentation may have a chilling effect on their continuing participation.

Certification is Discriminatory Towards Single Fathers

The IRS includes single custodial fathers under this procedure without providing any compelling evidence that the error rate within this filing universe is higher than among single custodial mothers. If the issue is that non-custodial fathers are claiming to be custodial fathers and filing for EITC benefits on behalf of a child who does not reside with them for at least half the year, the IRS already has avenues to deal with such filers by matching them against the National Child Support Registry and denying their claim for the EITC.

How Will Certification Affect Taxpayers Who Already Are Receiving the Advance EITC?

The advance receipt of the EITC is a way that taxpayers can obtain the benefit in their paycheck and not have to wait to file their tax return. Many EITC recipients are already reluctant to file the W-5s to obtain the advance EITC, because if they have made an error, they will have to pay the advance back. The certification process will be applied to people who have already filed an advance EIC for tax year 2003. These taxpayers will suffer a special harm in the event that they are daunted by the procedure or simply unable to obtain the proper documentation. They will not be told they are ineligible, and they will be assessed an overpayment. A special effort should be made to assist these families in complying with the pre-certification process, since the end result of non-compliance will be an overpayment.

Alternatives to Certification

Rather than creating a difficult process that stigmatizes low income taxpayers, the IRS could take the following steps to lower the error rate instead of imposing certification.

- Use a portion of the $100 million committed to this certification effort to instead beef up the IRS audit/ review capacity in error prone EITC cases and to reduce or eliminate the current long review periods for such audits. This would be preferable to launching an unprecedented certification process (in reality a pre-audit) for the EITC that is not required of any other individual taxpayers.

- Use a portion of the funding to better regulate, train and monitor commercial tax preparation businesses, particularly in low income communities. As indicated previously, commercial tax preparation firms are responsible for nearly 70% of EITC returns and errors are high

(Continued on page 18)

Regulatory Roundup

By: Susan Antos

This article reports activity in the New York State Register from October 8, 2003 to December 10, 2003. One new rule has been proposed, one new rule has been adopted and three rules were promulgated on an emergency basis. Four regulations have been continued. All references are to 18 NYCRR, unless otherwise indicated. If you are interested in reading the text of a proposed rule or the summaries of public comment and the response regarding an adopted rule, please contact Connie Wiggins (clewis@wnylc.com) or Nancy Krupski (nkrupski@wnylc.com) at GULP, Albany

Notice of Proposed Rulemaking

Date of Filing	Last Day to Comment	Regulations Affected	Summary
11/19/03	1/3/04	11 NYCRR 362-2.31 362-4.3	**Healthy New York Program:** This regulation would clarify which household members have their income included when determining eligibility in the Healthy New York program (applicant, spouse residing in the household and eligible children). The regulations also require Health Maintenance Organizations to utilize a shorter application form which has been created by the Insurance Department.

Notice of Adoption

Date of Filing	Last Day to Comment	Regulations Affected	Summary
11/25/03	12/10/03	351.8(c)(2) 352.22 (ab) 352.22 (ac)	**Determination of Need and Veteran's Payments:** This regulation reflects OTDA policy which has existed since 88 INF-59, p. 4 regarding the treatment of paid rent in the month of application. Additionally this regulation exempts veteran's benefits paid to compensate for spina bifida disability of the children of female Viet Nam veterans for Safety Net as well as federally funded public assistance benefits.

Regulatory Roundup, continued

Emergency Rulemaking

Date of Filing	Rules Expire On	Regulations Affected	Summary
9/17/03 11/14/03	11/15/03 01/12/04	370.10	**Temporary Shelter Supplements (TSS):** This regulation, which has been filed previously as an emergency rule in November 2001, and again in February 2002, June 2002, December 2002 and March 2003, allows families who receive Safety Net Assistance because they have reached the 30-month time limit to receive "Jiggetts" supplements. Under the TSS program, arrears payments can not exceed $3,000 or six times the monthly rental obligations.
9/17/03 11/14/03	11/15/03 1/12/04	11 NYRCC 362-2.3 362-4.3	**Healthy New York:** These regulations permit a standardized application for the Healthy New York program, and clarify who is a "household member:, when determining eligibility (applicant, spouse if residing in the household and any eligible children).
10/1/03	12/20/03	415.6 415.9	**Market Rates for Subsidized Child Care:** These regulations update the allowable rates which may be paid for child care subsidies. The rates are based on a survey conducted by the Office of Children and Family Services. A comparison of the new rates and the old rates (promulgated in October of 2001) are on the GULP website at www.gulpny.org/Child_Care/marketratecomparison2003.pdf. The regulations impose a new requirement on providers who only serve subsidized children. To obtain the new higher market rate, they must show that the actual cost of care is higher than the amount currently paid by the social services district. Providers who take both subsidized and private pay children only need to show that the amount paid by the private pay parents is at or above the new market rate.

Regulatory Roundup, continued

Notice of Continuation

Sanctions and Temporary Housing Assistance:

November 5, 2003 State Register contains a Notice of Continuation of a proposed regulation regarding temporary housing assistance. The regulation, which was proposed in the May 14, 2003 State Register, would amend 18 NYCRR 325.35 to impose a sanction of at least 30 days against a family that fails to pay its share of temporary housing assistance costs. The sanction will continue until such time as payment is made. The regulation also requires that sanctioned adult caretakers must take their children with them when leaving temporary housing. Finally, the regulation would repeal the provision that requires a protective or preventative services evaluation prior to discontinuing temporary housing assistance.

The filing of the Notice of Continuation gives the Office of Temporary and Disability Assistance (OTDA) until May 13, 2004 to adopt this regulation.

Eligibility for Food Stamps

The November 12, 2003 State Register contains a Notice of Continuation of a proposed regulation regarding the automobile resource rule for food stamps. OTDA now has until May 20, 2004 to adopt this rule.

Subsidized Child Care Services

The November 19, 2003 State Register contains a Notice of Continuation of a proposed regulation regarding subsidized child care. These regulations, which were summarized in the June, 2003 Legal Services Journal, impose a child support cooperation requirement as a condition of receiving a child subsidy. The Office of Children and Family Services now has until May 27, 2004 to adopt this rule.

Temporary Shelter Supplements

The December 3, 2003 State Register contains a Notice of Continuation of a proposed regulation regarding temporary shelter supplements. This regulation, which currently exists as an emergency rule, allows families who receive Safety Net Assistance because they have reached the 60 month time limit to receive "Jiggetts" supplements. Under the TSS program, arrears payments can not exceed $3,000 or six times the monthly rental obligations, whichever is higher. The filing of this notice gives the Office of Temporary and Disability Assistance until June 17, 2003 to adopt this rule.

Earned Income Tax Credit—continued

(Continued from page 14)

within these commercially prepared returns.[9]

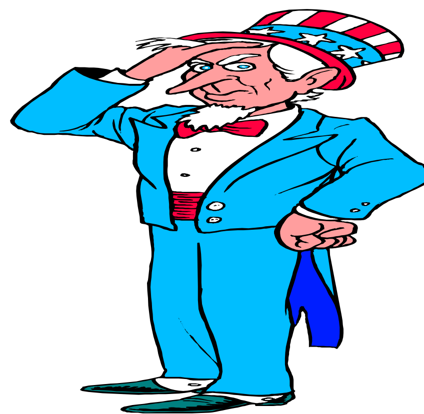
- Increase outreach and education efforts to EITC filers and greatly broaden the availability of free tax preparation sites and low income tax clinics where EITC filers can receive trained help in accurately completing their tax returns.

More Written Guidance Needed

Announcement 2003-40 and Form 8836 (with its instructions) raise many unanswered questions. How will the certification requirements be applied to taxpayers who received advance payments of their EITC in their paychecks because they gave completed Forms W-5 to their employers? If the IRS certification process determines that one of two claimed children is not a qualifying child for EITC purposes, will the claimant lose the entire EITC amount that he claimed or only the portion attributable to the second child? If the certification process determines that there are no qualifying children for a particular claimant, will that claimant still receive any otherwise available EITC (a smaller amount) because he is childless?

Such questions may have been answered if this change had been promulgated in the form of a regulation instead of an IRS announcement. The process for issuing a proposed regulation involves a greater number of IRS reviewers than are required to issue an announcement. The document submission requirements of the EITC certification program are a substantial change from prior EITC rules. Indeed, the documentation is unprecedented in the tax law and a significant number of taxpayers will be affected by this change.

Despite the lack of guidance, it appears that the IRS is proceeding full steam ahead. To the extent that legal services programs can mobilize pro bono tax resources to assist low income taxpayers in this matter, we will be providing the community we serve with a very useful service.



Endnotes

1. The notice is available at http://www.irs.gov/newsroom/article/0,,id=110298.00html
2. The Greater Upstate Law Project responded to the IRS's request for comments on the pre-certification process. The comments are available on GULP's web site at http://www.gulpny.org/Child_Care/EITC1commentsfinal.pdf.
3. See R. Greenstein, "What is the Magnitude of EITC Overpayments," Center on Budget and Policy Priorities, 5/20/03, available at www.cbpp.org.
4. See last paragraph of executive summary of IRS Report, " Compliance Estimates for Earned Income Tax Credit claimed on 1999 Returns." Februrary, 2002.
5. In 2000 65% of EITC claimants used paid preparers and of 161,000 EITC returns audited in 2002, 67% used paid preparers. National Taxpayer Advocate, FY 2002 Annual Report to Congress, p. 69 available at http://www.irs.gov/pub/irs-utl/arc2002_section_one.pdf.
6. FIS 2000 District Summary Report from Local Social Services Districts, report ending date 3/31/00.
7. 18 NYCRR 415.1(c).
8. Office of Children and Family Services, Schedule G-2 Child Counts, October 2000-September 2001.
9. Thirty-three percent of all math errors related to the EITC were made by paid preparers in 1999. Sixty-seven prevent of the returns selected to EITC examination in 2002, representing returns that the IRS believed had a high probability of error, were preparer filed. National Taxpayer Advocate, FY 2002 Annual Report to Congress, p. 69 available at http://www.irs.gov/pub/irs-utl/arc2002_section_one.pdf.

GULP Partners with the Affordable Housing Partnership on an Anti-Predatory Lending Venture for the Capital Region

The Greater Upstate Law Project is partnering with the Affordable Housing Partnership (AHP) in Albany on an anti-predatory lending project. The project is funded by the Charitable Leadership Foundation, a private foundation in Clifton Park, NY, and SEEDCO out of New York City. The anti-predatory lending project targets lower-income homeowners in the Capital Region. It includes funding for the development of a community education campaign, training of housing counselors in the Capital Region to identify predatory loans as well as counsel homeowners regarding safe options for refinancing their home equity and the development of a community loan program to help homeowners get low-cost money for home repairs and bail out victims of predatory lending.

AHP has sub-contracted GULP to provide the legal component for the project. The money enabled GULP to hire Kirsten Keefe who will provide direct representation to victims of predatory lending, as well as train housing counselors to refer cases directly to her. Kirsten also plans to train private lawyers in the Capital Region to build a cadre of lawyers to handle these types of cases.

A task-force has been established in the Capital Region comprised of Susan Cotner from the AHP, Roger Markovics of United Tenants, counselors from regional housing counseling organizations, our funders and CRA representatives from local banks. On January 8, 2004, Kirsten will train housing counselors on how to identify and counsel victims of predatory lending. A referral process has been set up through which Kirsten will get her cases. She will provide individual representation to victims of predatory lending through mortgage foreclosure defense, chapter 13 bankruptcies and affirmative cases.

There are excellent consumer protection statutes both on the federal and state level that can assist victims of predatory lending. The federal Truth in Lending Act (TILA), primarily a disclosure statute, enables borrowers to rescind a loan transaction if there are errors in the documents, which there often are. The Equal Credit Opportunities Act (ECOA) helps borrowers who were presented with a loan at closing that is far different than the loan for which they initially applied. The Real Estate Settlement Procedures Act (RESPA) prohibits unauthorized payments to brokers. There is the state General Business Law, our version of the unfair and deceptive trade practices act, and the anti-predatory lending law which went into effect in New York State in April 2003.

Most consumer laws have an attorney fee provision. Common law claims and defenses such as unconscionability, fraud and conversion typically are alleged, as well. Once a case is brought to the attention of the lender, lenders have been willing to work with borrowers since the costs of litigating cases and dealing with the property can total more than the loan itself.

Kirsten Keefe received her J.D. from the Beasley School of Law at Temple University in Philadelphia in 1997. She worked for the Public Interest Law Center of Philadelphia (PILCOP) for a year following graduation doing disability rights law and fair housing. In 1998, she joined Community Legal Services (CLS) in

(Continued on page 20)

Gene Doyle to Join GULP as Benefits Law Database Coordinator

By Susan Antos

Eugene Doyle has joined the Greater Upstate Law Project to update and maintain GULP's Benefits Law Database. The database, which is part of the Online Resource Center, can be accessed through the web pages of either the Greater Upstate Law Project (www.gulpny.org) or the Western New York Law Center (www.wnylc.net), and contains pleadings and decisions of hundreds of benefits cases. Gene will be scouring GULP's archives for old but relevant cases, and will be contacting advocates across the state to encourage new submissions.

Gene, who will be a long distance telecommuter, has a long and venerable history as an advocate for low income people. He is well known as a frequent and scholarly responder to queries posed on the Western New York Law Center Benefits List Serve. Gene has a MSW from the Adelphi School of Social Work, and most recently worked for the Law Offices of Vollmer and Tanck focusing on elder law and public interest litigation. He has worked for a number of Legal Services Programs including Nassau/Suffolk Law Services, MFY Legal Services in New York City and Westchester Putnam Legal Services. He also was a co-founder and executive director of People Organized for Our Rights, Inc., a grassroots advocacy organization for low income residents of southwestern Queens County.

Welcome Gene !!!!!

Affordable Housing Partnership—continued

(Continued from page 19)

Philadelphia and was a staff attorney in the Consumer/Housing unit doing mortgage foreclosure defense, bankruptcy, predatory lending and general consumer cases. Kirsten returned to upstate New York where she was raised to join GULP in September to work on the AHP anti-predatory lending project. However, this is only half of her job. Kirsten will work with the folks in Rochester including Ruhi Maker, Peter Dellinger, Mike Hanley, Barb VanKerklove, Becky Case and Jane Gabriel, to further develop GULP's consumer housing and economic development unit. The unit is available to provide statewide back-up support on all sorts of consumer cases and work for policy and legislative change.

Final Regulations Allow "Bank Snooping"

By Louise Tarantino & Kate Callery

The Social Security Administration (SSA) issued final regulations that make giving permission to contact financial institutions a condition of SSI eligibility. 68 Fed. Reg. 53506-53509 (September 11, 2003) [available online via GPO Access (wais.access.gpo.gov) or at www.socialsecurity.gov/regulations].

This is a final rule, following notice of proposed rules published May 2, 2002. (See July 2002 *Disability Law News* at www.gulpny.org for article and comments). The new regulation went into effect October 14, 2003.

SSA is amending the regulations by adding a new section 416.207 to 20 C.F.R to explain that in order to receive SSI benefits, a claimant must give SSA permission to contact any financial institution, and request any financial records that financial institution may have. The section further explains that the permission to contact financial institutions is required from anyone whose income and resources SSA considers as being available to the claimant, unless there is good cause why the permission cannot be obtained.

In response to comments, SSA agreed to include a "limited good cause exception" to compliance by deemees in getting and providing information from certain (non-parent / guardian / alien sponsor) deemors. "We have revised Sec. 416.207 (g) and 416.1321(a), and added Sec. 416.207(h) to include the good cause exception. These provisions are consistent with our current policy regarding a third party's failure to cooperate."

Also in response to comments, "We have revised Sec. 416.207(f) and added Sec. 416.207(f)(3) to clarify that the permission we obtain to access the financial records of deemors will terminate when deeming is no longer required and to clarify that when a terminating event occurs, the permission to contact financial institutions is not invalidated for past periods..."

The questionnaire for collecting this information already has been submitted to OMB for approval.

Medicare Bill—continued

(Continued from page 4)

lowest-income seniors, those New Yorkers eligible for both Medicaid and Medicare. These dual eligibles will experience restricted coverage under Medicare due to the Act's bar to Medicaid's supplemental coverage. Co-pay requirements are likely to pose significant financial barriers to accessing prescription drugs that are covered, particularly in years to come as co-pay rates can be expected to rise four times as rapidly as benefit-related incomes. In fact, cost-sharing requirements are likely to become unmanageable for most low-income New Yorkers who experience serious illness or disability and depend on the new drug benefit for access to medication.

Because the Act fails to provide any meaningful mechanism for reigning in escalating drug prices, out-of-pocket costs under the new benefit will escalate significantly even for middle-income New Yorkers. Deductibles and the size of the "doughnut hole" will inevitably grow each year. The Congressional Budget Office projects that seniors will see the $250 deductible jump by 10% in the first year and 78% by 2013.

The Hidden Cap on Medicare Spending

Instead of meaningful cost containment, the Act contains a dangerous provision masked as a cost control. The legislation creates a new accounting standard for Medicare that would declare the program insolvent once general federal revenues expended exceed 45% of the program's total costs. General revenues fund outpatient services and prescription drugs. Given advances in medical practice that make wider use of outpatient services and the escalating drug prices, this portion of Medicare spending is expected to exceed 45% sometime between 2015 and 2020, just as the bulk of the baby boom generation becomes eligible for Medicare.

Once the 45% cap is exceeded, financial reports are required, a false sense of crisis is generated, and media attention is virtually guaranteed. Legislation cutting Medicare benefits, raising premiums, or cutting payments to providers would be fast-tracked in Congress. For low-income beneficiaries who lack resources to pay for services that will no longer be available, the inevitable cut back in coverage truly represents a health care disaster waiting to happen.

Demonstration Project Aimed at Privatization

The Medicare Act of 2003 represents a long-term plan to privatize Medicare. In conjunction with the infusion of money for private plans and the 45% cap on expenditures from general revenues, the new law provides for a premium support demonstration to start in 2010. Under the demonstration, traditional, fee-for-service Medicare will be forced to compete directly with private managed care plans in six metropolitan areas. A benchmark cost will be established for each area. If the local costs-per-beneficiary of traditional Medicare exceed the benchmark, enrollees will be charged increased premiums to cover the difference.

According to analysis by the Center on Budget and Policy Priorities, beneficiaries who remain in traditional Medicare are likely to be older and sicker on average than those who enroll in the private plans. Thus, the cost per beneficiary of traditional Medicare is likely to exceed the benchmark, causing premiums to rise over time and thereby induce still larger numbers of beneficiaries to switch out of traditional Medicare.

What Next?

The Act's design delays implementation until 2006 - the worst effects of the program

(Continued on page 23)

Medicare Bill—continued

(Continued from page 22)

will not be felt until some time after the benefit takes effect. Thus, the fundamental flaws of the legislation may not be apparent to many Americans in advance of the next presidential election. It is crucial to educate seniors and others eligible for Medicare about the specific provisions of the new Act.

House Democratic Leader Nancy Pelosi and Representative Chet Edwards have already introduced legislation to repeal the Act's prohibition against negotiating lower drug costs. The Pelosi bill represents a huge step in the right direction, as only meaningful cost containment will help prevent cuts to Medicare in the future and protect against gradual erosion of the program. Hopefully, attention to repeal efforts will help publicize the huge problems with the new benefit and reveal the disastrous nature of the Medicare Act of 2003.

I value the work that GULP does on behalf of poor New Yorkers
and in support of the legal services community.
Enclosed is my tax-deductible contribution of:

____ $25 ____ $50 ____ $75 ____ $100 ____$150 _________Other

This donation is from:

Name____

Organization____

Street Address______________________________________

City, State, Zip_____________________________________

Phone____

Email____

Comments____

____

____

____

____

Thank you

for your

support!

Please return to:

GULP Fund
Greater Upstate Law Project, Inc.
119 Washington Avenue
Albany, NY 12210

Subscription Information

The *Legal Services Journal* © is published six times annually by the Greater Upstate Law Project, Inc., an anti-poverty advocacy, coordination, and support center. A one year subscription to the journal is $75.00. To order the paper copy of the journal, please complete the form below. Mail the form, together with your check, to: Legal Services Journal: c/o Greater Upstate Law Project, Inc., 80 St. Paul Street, Suite 660, Rochester, NY 14604.

Name ______________________ Organization ______________________

Street Address ______________________

City ______________ State ______________ Zip ______________

Phone Number ______________ Fax Number ______________ E-mail Address ______________

The Legal Services Journal

The *Legal Services Journal* © is published bimonthly by the Greater Upstate Law Project, Inc. (GULP), a public interest law firm that provides legal expertise, legislative and administrative advocacy, training, and technical support to civil legal services programs and community groups working to improve the lives of New York's poor and low-income families.

All rights are reserved. December 2003. Rochester, New York. GULP's work is supported by the following:

Hagedorn Family Foundation
Impact Fund
IOLA Fund of the State of New York
LICF Krasnoff Family Fund
Long Island Community Foundation
MAZON: A Jewish Response to Hunger
NYS Assembly Majority
New York State Bar Foundation
NYS Department of State
NYS Office of Temporary and Disability Assistance
Robert Sterling Clark Foundation
Rochester Area Community Foundation
Schott Foundation
Target Stores
United States Department of Justice

All opinions expressed in this newsletter are those of the authors and not the GULP funders.

Articles may be reprinted with the permission of the authors. Articles from readers are always welcome.

Please send your materials to:
Editor, Legal Services Journal
Greater Upstate Law Project
80 St. Paul Street, Suite 660
Rochester, NY 14604

STAFF

Albany Office

119 Washington Ave., Albany, NY 12210 ▪ (518) 462-6831▪ Fax: (518) 462-6687
Email: Nkrupski@wnylc.com

Anne Erickson, President & CEO

Susan C. Antos, Attorney
Public Benefits

Gene Doyle, Law Intern
Benefits Law Database

Kristin Brown,
Director of Legislative Advocacy

Bob Carlton, Upstate LawHelp
Coordinator/Admin. Assistant

Colleen Glavin, Law Intern
Fair Hearing Bank

Kirsten Keefe; Attorney
Predatory Lending

Nancy C. Krupski
IT Communications Coordinator

Anzala Wilson; Paralegal
Domestic Violence, Immigration

Louise M. Tarantino, Attorney
Disability

Barbara Weiner, Attorney
Food Stamps, Immigrant Benefits

Connie Wiggins, Administrative
Assistant

Rochester Office

GULP ► 80 St. Paul Street, Suite 660, Rochester, NY 14604 ▪ (585) 454-6500 ▪ Fax: (585) 454-2518
PILOR► 80 St. Paul Street, Suite 701, Rochester, NY 14604 ▪ (585) 454-4060 ▪ Fax: (585) 454-4019
Email: mvanorman@wnylc.com

Bryan D. Hetherington, Chief Counsel

Michael Bonsor, Attorney
Disability

Anita Butera, Attorney
Community Reinvestment Unit

Catherine Callery, Attorney
Disability

Becky Case, Attorney
Predatory Lending

Gladys Castro
Administrative Assistant

Doris Cortes, Paralegal
Disability

Trilby de Jung, Attorney
Health Law

Peter Dellinger, Attorney
Consumer Law, Civil Rights

Jayne Elebiari, Paralegal
Disability Supervisor

Jonathan Feldman, Attorney
Education Law, Civil Rights

Sarah Gilmour, Attorney
Disability & Civil Rights,
Health Care, Housing

Angela Hale, Administrative Assistant

Michael Hanley, Attorney
Housing

Kristi Hughes, Director
Development & Administration

Ruhi Maker, Attorney
Community Reinvestment
PredatoryLending

Spenser Phillips, Attorney
Civil Rights

Tania Santiago, Paralegal
Disability

Becky Schroeder
Fiscal Manager

Amy Schwartz, Attorney
Domestic Violence

Barbara van Kerkhove, Ph. D
Community Reinvestment Assoc.

Michelle Peterson
Administrative Secretary

Gerald Wein, Attorney
Special Projects

White Plains Office

Hudson Valley Poverty Law Center
80 North Broadway, White Plains, NY 10603 ▪ (914) 422-4329 ▪ Fax: (914) 422-4391
Email: Rcisneros@law.pace.edu

Linda Bennett, Attorney
Immigration, HIV/AIDS

Robert Cisneros, Attorney
Immigration, HIV/AIDS