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## **HCA, Rep. Engel and Rep. King Announce Bill to Protect Chronically Ill Home Care Patients and Their Spouses**

*Engel/King bill would preserve vital Medicaid rules shielding couples from impoverishment when obtaining home care services for a chronically ill spouse*

The Home Care Association of New York State (HCA), Congressman Eliot Engel (D-17) and Congressman Peter King (R-3) today announced critical legislation that would protect spouses of chronically ill patients from falling into poverty as a result of obtaining needed long term care services for a loved one at home.

Reps. Engel and King's legislation codifies and reasserts Congressional authorization for vital Medicaid budgeting rules called "spousal impoverishment protections." These rules have protected spouses of patients receiving long term care at home in the same way as Congress has protected the spouses of patients in nursing homes. In recent years, these long-standing rules have been reinterpreted and effectively negated by the U.S. Centers for Medicare and Medicaid Services (CMS), even though the spousal protections have been in effect for households in New York State for two decades based on federal law and policy. (See "Background" section attached to this release.)

In fact, last fall CMS went one step further and insisted that New York State change its own laws to eliminate these protections as a condition of renewing New York's home and community-based services waiver for long term home health care patients. As negotiations over the renewal of this vital waiver continue – with the fate of impoverishment protections for the spouses of **3,000 chronically ill New Yorkers in the balance** – the Engel/King legislation will ensure unequivocally that these protections are maintained.

Absent these vital "spousal impoverishment protections," chronically ill home care patients and their spouses face a painful choice: 1) obtain needed home care services to avoid unwanted nursing home institutionalization, but face impoverishment (even to the point where home care itself is not viable); or 2) seek care in a nursing home, where the Medicaid impoverishment protections would apply and where the chronically ill spouse must live separately from his or her spouse, be forced into a life of facility confinement, and where the cost of care is ironically higher. The withdrawal of impoverishment protections for community based care is not only inhumane but creates an imprudent and costly bias toward institutionalization.

An estimated **3,000 patients** in New York's Long Term Home Health Care Program (LTHHCP) receive these critical protections, the continuation of which is currently at stake.

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HCA President Joanne Cunningham said: “Family life and other social bonds are often what sustain us during a time of illness. Thanks to innovations in health care delivery, today chronically ill patients are able to receive proper care in their homes. Husbands and wives who have spent their entire adulthood together can remain together when their partner becomes chronically ill. This important legislation preserves existing protections for these patients and their spouses and maintains the vital progress we have made in creating a more patient-centered health care system. I want to give our thanks to Rep. Engel and Rep. King for their leadership on this issue.”

Rep. Engel said: “The legislation will extend the same spousal impoverishment protections to home care patients as are currently permitted to patients in institutional care. Home care allows families to stay together. It permits a patient to stay in familiar surroundings and helps them better deal with the challenges facing them as a result of the illness. This type of alternative to institutional care is not only logical and necessary, but it is humane. If families want to stay together, why should the government tell them otherwise?”

Rep. King said: “Passage of this bill would allow chronically ill patients to continue receiving care at home – together with their spouses – without the risk of economic impoverishment that undermines the purpose of health care. When the law protects spouses of nursing home patients from falling into poverty, then it makes absolutely no sense to deny those same protections for the spouses of patients who choose to receive long-term care at home.”

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## ***Background on “Spousal Impoverishment Protections”***

Twenty years ago, the U.S. Congress enacted legislation so that the decision to admit a chronically-ill spouse into a nursing home did not lead to the impoverishment of the husband or wife who remained at home in the community (referred to as the “community” spouse) since much of the chronically-ill spouse’s income and assets went toward the cost of his or her care. This traditionally applied in cases where the husband served as the household’s primary breadwinner and therefore had a higher income. When it came time to secure nursing home services for him, much of his income was devoted to paying for the cost of his care, leaving the community spouse – his wife – with little income to support her at home.

To address this dire situation, Congress included spousal impoverishment protections in the Catastrophic Coverage Act of 1988. These rules allowed state Medicaid programs to protect the institutionalized spouse’s income and resources up to a level that, when combined with the community spouse’s income, would prevent the community spouse from slipping into poverty. Congress also wisely authorized states to provide parallel protection for patients living at home, as this not only provided for desirable care but avoided what would otherwise have been an inadvertent incentive toward more expensive institutional care. For twenty years, New York State has applied these same spousal impoverishment protections for patients in the state’s Long Term Home Health Care Program (LTHHCP) as to nursing home patients. The LTHHCP provides a nursing-home-level of care to 25,000 to 30,000 chronically-ill patients at home – and, historically, at half the cost of nursing home care.

Unfortunately, over the last two years CMS has reinterpreted the law that has allowed states like New York to provide a parallel level of spousal impoverishment protection for patients in programs like the LTHHCP. For New York State in particular, CMS has advanced this reinterpretation of the spousal impoverishment rules during its review of the state’s reauthorization requests for the LTHHCP and other in-home waiver programs that are subject to CMS approval.

Absent these vital “spousal impoverishment protections,” chronically ill home care patients and their spouses face a painful choice: 1) obtain needed home care services to avoid unwanted nursing home institutionalization, but face impoverishment (even to the point where home care itself is not viable); or 2) seek care in a nursing home, where the Medicaid impoverishment protections would apply and where the chronically ill spouse must live separately from his or her spouse, be forced into a life of facility confinement, and where the cost of care is ironically higher. The withdrawal of impoverishment protections for community based care is not only inhumane but creates an imprudent and costly bias toward institutionalization.

This recent reinterpretation of the statute would, if enforced, create a financial bias toward institutional care – even when care at home may be the patient’s preferred choice, the most medically appropriate choice, and the least costly choice to the Medicaid system as a whole. In the case of the LTHHCP, as many as **3,000 patients in New York State** are affected by CMS’s reinterpretation of the rule and may either lose the option to receive care at home or else seek institutional care instead – unless CMS changes its position, develops an alternative approach in the renewal of the state’s waiver, or if Congress passes a law clarifying Congress’s intent to allow these protections for home care patients.

With pressure from HCA, members of New York’s Congressional Delegation and the state Department of Health, CMS has twice extended its authorization of the LTHHCP past its December 31, 2008 deadline to allow for a permanent solution on the spousal impoverishment issue. Congressmen Engel and King have sponsored a bill that provides a much-needed long-term solution. The bill would “continue Medicaid spousal impoverishment protections for spouses of home and community based waiver patients parallel to protections afforded spouses of nursing home patients.”